

Notices to Admit

In my view, one of the most underutilised procedures under the various court rules is the service of notices to admit. They can be of great forensic advantage, assist practitioners and parties to comply with their obligations under the *Civil Procedure Act 2010* (Vic) and can also have favourable cost consequences for a client.

Notice to Admit Facts

In summary:

- (1) a party may serve on another party to the proceeding a notice stating that unless the other party disputes the facts specified in the notice (within a specified time being not less than 14 days after service), then the other party shall, for the purpose of the proceeding only, be taken to admit those facts;¹
- (2) if the other party does not dispute any fact specified by serving notice that the fact is disputed within the time allowed by the notice, then the other party, for the purpose of the proceeding only, will be taken to admit that fact;² and
- (3) if a party makes admissions of fact in a proceeding, whether by their pleading or otherwise, the Court may, on the application of any other party, give the judgment or make the order to which the applicant is entitled on those admissions³ and the Court may exercise this power without waiting for the determination of any other question in the proceeding.⁴

Notice to Admit Documents

In summary:

- (1) a party may serve on another party to the proceeding a notice stating that unless the other party disputes the authenticity of the documents

¹ *Supreme Court (General Civil Procedure) Rules 2005*, r 35.03(1)

² *Ibid* r 35.02

³ *Ibid* r 35.04(4)

⁴ *Ibid* r 35.04(2)

mentioned in the notice (within a specified time being not less than 14 days after service), then the other party shall, for the purpose of the proceeding only, be taken to admit the authenticity of those documents;⁵

- (2) “authenticity of a document” is defined to mean that a document:
 - (a) is what it purports to be;
 - (b) if an original or described as such, is an original document and was printed, written, signed or executed as it purports to have been;
 - (c) if a copy or described as such, is a true copy;⁶ and
- (3) if the other party does not dispute authenticity of a document specified by serving the notice that authenticity is disputed within the time allowed by the notice, then the other party, for the purpose of the proceeding only, will be taken to admit its authenticity.⁷

Cost consequences of non-admission of facts or documents

If the other party serves a notice disputing a fact or the authenticity of a document, and afterwards the fact or document is proved in the proceeding, then that party is to pay the costs of proof unless the Court orders otherwise.⁸

Conclusion

As part of taking your initial instructions and having issued proceedings it is usually fairly apparent which facts and documents will be necessary to prove to make good the cause or causes of action you rely upon. In these circumstances, it is usually not an onerous task to prepare a list of those facts and documents in the form of notices to admit and serve them on

⁵ Ibid 35.05(1)

⁶ Ibid 35.01

⁷ Ibid 35.05(2)

⁸ Ibid 35.06

the other side. Some obvious examples of where notices to admit can be advantageous forensically and/or financially for the client include:

- (1) where the proof of certain facts will require the issuing of subpoenas to third parties or is within the knowledge of the other-side's witnesses only;
- (2) where there are large amounts of documents to be proved;
- (3) where there are real doubts about whether there is a proper basis to the claim or defence which the other-side has advanced;
- (4) refining the issues in dispute for trial generally;
- (5) protecting the client on costs; and
- (6) ensuring the client and you as the practitioner are seen as compliant with the *Civil Procedure Act 2010 (Vic)*.

Finally, I would refer practitioners to the relevant court rules for the appropriate forms to use.

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