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R U L I N G

HIS HONOUR:

**Introduction**

I refer to the most recent version of the defendant's ('VicForests') proposed minute of orders ('minute'). As to paragraph 3 of the minute, the application will be heard and determined on Thursday 12 August 2021.

**Subpoenas**

Subpoenas issued by the plaintiff ('Warburton') have been outstanding for a considerable period of time. It is fair and just that Warburton should have the benefit of documents produced on subpoena a reasonable time ahead of the dates by which it is required to file and serve its affidavits.

There is a threshold issue under the *Civil Procedure Act 2010* (Vic) as to the extent that the Court will permit the parties to issue subpoenas. There is no sense in duplicating the large number of documents that have previously been made available by VicForests or that will be forthcoming through discovery. The statement of issues will assist in ensuring that the documents sought on subpoena are relevant.

In paragraph 5 of the minute, I will substitute Friday 26 August 2021. Any application by VicForests as to subpoenas will need to be heard and determined in advance of the timetable for the return of subpoenas. I will direct that by 4pm on 30 July 2021, each party file and

1 serve any application in respect of disputed subpoenas.

2 I am not aware whether VicForests has served any  
3 subpoenas. If VicForests proposes to do so, they should be  
4 served on the appropriate parties ahead of the timetable  
5 that I will fix. Warburton will have the opportunity to  
6 file and serve any application that it may wish to make as  
7 to subpoenas.

8  
9 **Evidence**

10 Both parties have already filed and served a large  
11 number of affidavits. It is most efficient if lay evidence  
12 and expert evidence is provided concurrently. I will adopt  
13 the timetable set out in paragraph 7 and 8 of the minute.  
14 That will mean that Warburton's reply evidence will be  
15 finalised by 4pm on 3 December 2021.

16  
17 **Expert evidence**

18 If Friday 21 January 2022 is fixed as the date for  
19 the provision of a joint report by the experts as  
20 paragraph 10 of the minute suggests, it is likely that the  
21 experts will postpone their joint conference and report  
22 well into December, if not into January.

23 Provision of the joint expert report is not the end  
24 of the process. Subsequent investigations may be required.  
25 Individual experts may wish to comment on the findings of  
26 the joint report. Legal advisors need to prepare  
27 submissions ahead of the trial. In lieu of the date in  
28 paragraph 10, I will substitute Friday 24 December 2021.  
29 That will give the experts three weeks in which to conduct  
30 a joint conference and complete a joint expert report.

31 This is reasonable as it is commonplace for the experts to

1 draft the joint expert report during the joint expert  
2 conference.

3

4 **Notices**

5 I accept paragraphs 12 and 13 of the minute. I do  
6 not see any problem with a January date for the giving of  
7 notices for deponents to attend for cross-examination and  
8 objections as to evidence.

9

10 **Other matters**

11 As to other matters, I generally accept what is in  
12 the minute, and will grant liberty to apply and reserve  
13 costs.

14