



Government Gazette

of the State of
New South Wales

Number 108
Friday, 29 May 2020

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PRACTICE NOTE SC CL 1

Supreme Court Common Law Division - General

Commencement

1. This Practice Note commences on 25 May 2020.

Application

2. This Practice Note applies to all civil proceedings in the Common Law Division of the Supreme Court of New South Wales.
3. This Practice Note should be read in conjunction with other Common Law Division Practice Notes and specifically those of the individual lists.

Definitions

4. In this Practice Note:

ADR means Alternative Dispute Resolution and includes mediation under Part 4 of CPA and arbitration pursuant to Part 5 CPA.

Affidavit of Readiness means an affidavit setting out that all evidence and statements have been served and all Court orders have been complied with.

Chief Judge means the Chief Judge at Common Law or any judge nominated to perform duties on behalf of the Chief Judge.

Concurrent expert evidence means two or more expert witnesses giving evidence at the one time.

CPA means *Civil Procedure Act 2005*.

Evidentiary statement means a statement by the plaintiff which will form the basis of his or her evidence in chief or where the plaintiff is a corporation or is unable as a result of age or disability to give evidence a statement by an appropriate officer of the corporation or by that person through whom it is intended to provide the factual basis for the plaintiff's case in chief.

Registrar means the Registrar (Common Law Case Management).

the List Judge means the Judge appointed by the Chief Justice to be the List Judge for specific lists within the Common Law Division.

Duty Judge means the Judge designated from time to time to be the Judge of the Common Law Duty List.

Duty Registrar means a Registrar appointed by the Prothonotary to consider applications by parties and provide procedural advice and assistance to both practitioners and litigants in chambers on Level 5 of the Supreme Court.

Single expert witness means an expert witness jointly retained by the parties or appointed by the Court in accordance with UCPR Part 31 r 31.37(2).

UCPR means the *Uniform Civil Procedure Rules 2005*.

Introduction

5. The purpose of this Practice Note is to outline the case management practices of the Common Law Division in civil proceedings and the General Case Management List.

Commencement of Proceedings

6. The UCPR determine the Division and List that a matter is allocated to (see UCPR 1.16-1.21). The lists in the Common Law Division include the Administrative and Industrial Law List, the Defamation List, the High Risk Offenders List, the Possession List and the Professional Negligence List.
7. Proceedings in the Division must be commenced by way of Summons or Statement of Claim (see UCPR 6.1 and 6.2).

Venue

8. The venue for proceedings in the Division is Sydney.
9. Where a party proposes that a case or number of cases should be heard at a venue outside Sydney, this should be raised with the Registrar or Judge managing the case. The party should provide information to the Court as to the availability of the courthouse in the area where it is proposed to have the sitting.

Default Proceedings

10. Proceedings that may be wholly dealt with by entry of a default judgment are not allocated a Directions Hearing on filing. Instead, the matter proceeds administratively, until a default judgment is entered, the matter is discontinued, consent orders are made, a defence is filed, or the proceedings are dismissed under UCPR 12.8.
11. Where a defence is filed, the matter will be listed for a Directions Hearing before a Judge or the Registrar. It will then proceed as a defended matter in either the General Case Management List (in accordance with this Practice Note) or the Possession List (see Practice Note SC CL 6).

Case Management Generally

12. In proceedings other than default proceedings, the Court will allocate a Directions Hearing when the Summons or Statement of Claim or defence (as appropriate) is filed. They will then be initially listed for case management before a Judge or the Registrar and may subsequently be referred to the Registrar (where a matter has been case managed by a Judge) or to a Judge (where a matter has been case managed by the Registrar) for case management.
13. All matters will be initially allocated to the Registrar for case management except for the following matters which will be allocated to a Judge for case management:

- proceedings filed in the General List relating to intentional torts, wrongful arrest, false imprisonment, malicious prosecution and misfeasance in public office;
 - all proceedings filed in the Defamation List;
 - all defended proceedings in the Possession List;
 - all proceedings filed in the Professional Negligence List;
 - all representative proceedings filed pursuant to Part 10 of the CPA; and
 - all proceedings filed under the Crimes (High Risk Offenders) Act 2006.
14. This Practice Note should be read in conjunction with any practice note that relates to the specific lists referred to in the preceding paragraph.

Strike Out for Inactivity

15. Parties should note the provisions of UCPR 12.7. If proceedings are not prosecuted with due despatch an order dismissing the proceedings or striking out a defence in whole or in part may be made.
16. UCPR 12.8 permits the Court to make an order dismissing the proceedings of its own motion if it appears from the Court's records that for over five months no party has taken any step in the proceedings.
17. A notice will be emailed or posted to a party's address for service before the Court considers whether a matter will be disposed of under UCPR 12.8. Where there is no response to the notice issued, the Court may determine whether the proceedings should be dismissed in chambers without further notice to the parties. Upon receipt of the notice a party may write to the Registrar objecting to the disposal of the proceedings under UCPR 12.8.
18. Upon receipt of notification from a party objecting to the dismissal, the matter will be listed before either a Judge or Registrar for a Show Cause hearing. At the Show Cause hearing the parties will have the opportunity to make submissions about dismissal and must provide an affidavit explaining what steps have been taken in the matter. Where the Judge or Registrar is satisfied that sufficient cause has been shown, an order of dismissal will not be made. Orders will then be made to progress the proceedings.
19. Where the Registrar is not satisfied that sufficient cause has been shown, the proceedings will be dismissed or referred to a Judge for dismissal.
20. If a case is in the Possession List the Court may dismiss the proceedings if it appears from the Court's records that for over nine months no party has taken any step in the proceedings. Such dismissal may occur without any notice to the parties.
21. If in proceedings there is no appearance by a plaintiff at a listing, then the Judge or Registrar may stand the matter over to another date and direct that not less than five days before that date a notice of the adjournment is to be served on the plaintiff, advising that the proceedings may be dismissed if there is no appearance by or on behalf of the plaintiff at the adjourned hearing pursuant to UCPR 13.6.

The Registrar's Directions List

22. Proceedings in the Division will generally be managed by way of Directions Hearings conducted by a Judge or the Registrar.

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23. The Registrar sits each weekday at 9:00 AM to hear the Directions List.
 24. Parties should discuss their matters prior to each Directions Hearing and prepare Short Minutes of proposed Orders to hand up at the hearing.
 25. Each party not appearing in person must be represented at the Directions Hearing by a barrister or a solicitor familiar with the subject matter of the proceedings and with instructions sufficient to enable all appropriate orders and directions to be made, or who is able to obtain such instructions should the matter be stood in the list.
 26. The purpose of a Directions Hearing is to ensure the just, quick and cheap disposition of proceedings in accordance with the overriding purpose set out in section 56 of the CPA. Each party is obliged to notify the Court and the other parties if they are aware of any substantial default that cannot be cured by the making of consent variations to directions or timetable.
 27. The tasks at a Directions Hearing include, but are not limited to:
 - (a) considering whether the proceedings would more appropriately be heard in the District Court and making a consent order accordingly;
 - (b) defining the matters in issue, including liability. If no defence (or defence to cross-claim) has been filed the Registrar may direct that there be judgment as to liability on that claim;
 - (c) considering whether there should be a separate trial of the liability issue held before the trial of issues as to quantum, especially in the case of a child plaintiff where the assessment of damages may take some time before being able to be determined;
 - (d) directing that a party serve or all parties serve or file and serve witness statements – the purpose of such a direction being to facilitate clarification of issues and realistic negotiations for settlement;
 - (e) considering whether ADR is suitable;
 - (f) making consent orders for the completion at the earliest possible time of interlocutory steps such as discovery, interrogatories, views, medical examinations and expert reports;
 - (g) directing that a party or all parties serve or file a statement of damages - the purpose of such a direction being to facilitate what heads of damage are genuinely in dispute and to provide a basis for realistic negotiations for settlement.
 28. Directions Hearings, other than the first Directions Hearing for cases to be heard in Sydney, may be conducted by telephone. Parties wishing to avail themselves of this facility must advise the Sydney Registry at least seven days prior to the date of the scheduled Directions Hearing. This written advice is to be forwarded to the “Common Law List Clerk” and must indicate a telephone number that the party or relevant legal representative wants to be called at for the Directions Hearing. Such advice is to be sent by email to the Listings (Civil) email address set out on the Contact Us page on the Supreme Court website.
 29. It is expected that prior to the first Directions Hearing the parties’ legal representatives will have discussed the case and will have:
 - (a) narrowed issues and identified any matters of agreement;
 - (b) agreed on suitable interlocutory, directions or arrangements;

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- (c) prepared a draft timetable for the future management of the proceedings;
 - (d) prepared draft short minutes of any orders or directions to be sought at the directions hearing; and
 - (e) discussed the possibility of settling the dispute by ADR.
30. The Registrar will first deal with urgent matters or referrals. Where the Registrar is satisfied that the matter is urgent, the proceedings will be referred to the Duty Judge if it will take less than two hours to hear. Otherwise the matter will be referred to the Chief Judge to allocate a hearing date.
 31. The Registrar will next deal with consent matters before calling over the remaining list.
 32. If previous directions have not been complied with, the parties must provide an explanation for the delay by way of affidavit and must be able to satisfy the Registrar that the matter will be able to progress in accordance with the obligations imposed upon them by the CPA. Where the Registrar is not satisfied with the explanation, a costs order may be made or the matter may be referred to a Judge.
 33. Matters will not be adjourned generally and in most cases will not be adjourned for lengthy periods. Any requests must be supported by an affidavit setting out the basis for lengthy adjournments.
 34. Consent applications to adjourn a Directions Hearing to a later date must be made to the Registrar in writing, no later than 48 hours before the Directions Hearing. Such applications must be supported by an explanation of the circumstances in which agreement on an adjournment has been reached. If not notified by the Registrar that the adjournment has been granted, the parties must appear at the Directions Hearing.
 35. Proposed consent directions and orders and consent applications to adjourn a Directions Hearing may be sent to the Registrar, Common Law Case Management email address set out on the Contact Us page on the Supreme Court website. When the parties request the Registrar to make consent orders in chambers those orders must include the vacation of any date for Directions Hearings or the hearing of motions that the parties no longer require, and the new date for directions. If there has been default in a previous timetable, the parties are required to provide an explanation for non-compliance.
 36. In personal injury actions, where a matter is unlikely to be ready to proceed for a period of time the parties should be able to inform the Registrar whether a separate hearing on liability will be sought prior to the determination of the question of quantum. Affidavits in support of lengthy adjournments must be filed providing evidence of the status of the injury and when it is claimed that the injury will stabilise.
 37. Any matters, other than personal injury claims, that are not ready for referral to obtain a hearing date within 6 months of the first directions date (or in the case of matters commenced in the Administrative and Industrial Law List within 3 months), are to be referred for judicial case management.
 38. Personal injury claims, other than those referred to in paragraph 37, that are not ready for referral to obtain a hearing date within 12 months of the first directions date, are to be referred for judicial case management.

Claims in tort, contract and debt

39. At the first Directions Hearing a plaintiff is to provide to each party an evidentiary statement. If it is intended to raise other issues not covered by the evidentiary statement an amended evidentiary statement is to be served on each party as soon as practicable after the need to amend the evidentiary statement arises.
40. Each defendant is to serve on the plaintiff within 28 days of receipt of the evidentiary statement a statement of issues in dispute. The statement of issues in dispute is to set out concisely those facts which the defendant intends to establish in respect of each issue in dispute by the evidence that is to be led.
41. A plaintiff is to serve on each party within 14 days of receipt of the statement of issues in dispute a statement identifying those issues and the facts set out by the defendant which are agreed or not.

Evidentiary Orders prior to Allocation of a hearing date

42. The Judge or Registrar will order:
 - (a) the plaintiff to serve any further witness statements or affidavits to be relied on at the hearing including any statements additional to those served under paragraph 40;
 - (b) the defendant to serve any witness statements or affidavits to be relied upon at the hearing;
 - (c) the plaintiff to serve any witness statements or affidavits in reply; and
 - (d) the parties to serve copies of any documents to be relied upon.
43. A witness may only give oral evidence at trial with leave.

Expert Witnesses

44. The Court is concerned about the number of experts often expected to give evidence particularly in personal injury cases. The practice of having a large number of experts qualified, both medical and otherwise, whose opinions may be overlapping and whose reports either are not used or are of little assistance to the Court when tendered, is costly, time-consuming and productive of delay. The attention of practitioners in cases in which a claim is made for personal injury or disability is drawn to Practice Note SC Gen 10 which deals with "Single Expert Witnesses".
45. Where it is considered that an unnecessary expert has been qualified or is sought to be called to give evidence, the Court may:
 - reject the tender of the expert's report;
 - refuse to allow the expert to be called; and
 - disallow any costs incurred in qualifying the expert, in having the expert's report prepared or in calling the expert to give evidence.
46. As a guide, the number of expert witnesses giving evidence on behalf of a party shall be limited to:

- (a) one medical expert in any speciality, unless there is a substantial issue as to ongoing disability, in which case the number shall be limited to two in any relevant speciality concerning that disability; and
 - (b) two experts of any other kind.
47. Expert accountant and actuarial reports will as a rule be considered unnecessary except in special circumstances where they are shown to be of assistance in the assessment of damages, for example, in proceedings under the Compensation to Relatives Act 1897 or where a claim is made for the costs of future fund management.

Concurrent expert evidence

48. All expert evidence will be given concurrently unless there is a single expert appointed or the Court grants leave for expert evidence to be given in an alternative manner.
49. At the first Directions Hearing the parties are to produce a schedule of issues in respect of which expert evidence may be adduced and identify whether those issues potentially should be dealt with by a single expert witness appointed by the parties or by expert witnesses retained by each party who will give evidence concurrently.
50. In the case of concurrent experts, within 14 days of all expert witness statement/reports being filed and served, the parties are to agree on questions to be asked of the expert witnesses. If the parties cannot reach agreement within 14 days, they are to arrange for the proceedings to be re-listed before the Court for directions as to the questions to be answered by the expert witnesses.
51. In the case of concurrent experts, the experts in each area of expertise are to confer and produce a report by the date specified in the order of matters agreed and disagreed setting out the reasons for their disagreement.
52. After joint experts reports have been provided, further questions may only be asked of the experts by agreement, or with the Court's prior leave. In that event the experts are to confer again and to produce a further report prior to a specified date, again specifying the matters agreed and disagreed and the reasons for any disagreement.

Single expert witness

53. At the first Directions Hearing a single expert direction will be made in respect of those issues considered appropriate for a single expert. In all proceedings in which a claim is made for damages for personal injury, a single expert direction as to damages will be taken to have been made at the first Directions Hearing unless otherwise ordered.
54. A single expert direction, when made in those terms, means that the following are to be taken as having been made, with such variations as may be specified at that time or subsequently:
- Any expert evidence is confined to that of a single expert witness in relation to any one head of damage, including but not limited to the nature, extent and cost of required nursing care or domestic care (including claims under *Griffiths v. Kerkmeyer*), physiotherapy, speech therapy, home modification, motor vehicle or aids and equipment, being of the kind customarily given (by way of example) by rehabilitation consultants, occupational therapists, nursing or domestic care providers, architects, builders, motor vehicle consultants, and by aids and equipment suppliers.

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- Evidence may be provided by the same single expert in relation to more than one head of damage provided the expert is appropriately qualified. It is contemplated, however, that there may be a number of single expert witnesses retained or appointed in the one proceedings.
 - In relation to any head of damage as to which any party wishes expert evidence to be adduced, the parties within 14 days from a date specified in the order as the commencement date of the direction are to agree on a single expert to be retained and are to obtain the consent of the expert together with an estimate of the time required by the expert to complete the report.
 - If the parties are unable to agree on a single expert or obtain the consent of the expert within the 14 day period referred to in the previous paragraph, the parties are to notify the Court within a further 3 days and the Court will, pursuant to Part 31 of the UCPR, appoint a Court expert to be the single expert.
 - Within 14 days from the selection or appointment of a single expert witness the parties are to brief the expert in such manner as the parties may agree with material sufficient to enable the expert to prepare a report. If the parties do not agree as to the manner of briefing the expert or as to the material to be provided to the expert or as to the questions to be put to the expert, the parties are to notify the Court within three days for the purpose of having the matter re-listed for further directions as to briefing the single expert.
 - If the parties agree or the single expert witness so requests, the plaintiff in the proceedings is to submit to clinical examination by the single expert witness.
 - Within 21 days from the date on which a single expert witness is so briefed or within the time estimate provided by the single expert, the expert is to send his or her report to each of the parties to the proceedings through their legal representatives.
 - A single expert witness may be requested to provide a supplementary report taking into account any new or omitted factual material. The provisions of this part of the practice note apply to such a supplementary report *mutatis mutandis*.
 - Any party may within 14 days from receipt of the report put a maximum of 10 written questions to the expert, but for the purpose only of clarifying matters in the report unless the Court otherwise grants leave. The expert is to answer the questions within 14 days.
 - The report of a single expert witness and any questions put to the expert and the expert's answers thereto may be tendered by any party at the trial subject to all just exceptions.
 - A single expert witness may be cross-examined at trial by any party.
 - A single expert witness' fee for preparation of the report and any supplementary report and for attending Court, if required to do so, is to be paid by the parties equally, subject to other agreement or direction and subject to any later order concerning the costs of the proceedings. A single expert witness' fee for answering questions put by a party is to be paid by the party, subject to the same qualification.
 - A single expert witness may apply to the Court for directions.

Mediation/Arbitration

55. At any Directions Hearing, the Court may consider whether the proceedings are suitable for ADR.
56. Parties must actively consider whether the matter is suitable for mediation or arbitration. Under UCPR 20.3 the Court may require each active party to state whether they consent to referral of the matter to mediation. If mediation has not been agreed, the parties must advise the Judge or Registrar at an appropriate Directions Hearing why the matter is not suitable for mediation. The Registrar may refer the matter to a Judge where the parties indicate that mediation is not agreed.
57. If the matter appears to the Court to be appropriate for resolution by mediation or arbitration, the Court will refer the proceedings for mediation or arbitration.
58. The Court may give directions requiring statements from parties including a timetable to enable parties to be prepared for mediation.
59. Should a matter not resolve at mediation then the parties are to file a Joint Memorandum of Agreed Facts and Issues in Dispute within 14 days of the mediation.
60. Parties are reminded that the Court has trained registrar-mediators available to conduct mediations on application.
61. Parties should also note the provisions of Practice Note SC Gen 6 which deals with the Court's Mediation practices.
62. Where the Court refers proceedings for arbitration, the court may give directions for the conduct of the arbitration.

Allocation of hearing dates

63. Upon the service of lay witness statements or affidavits, matters will be referred to the Chief Judge to determine if it is appropriate to list a matter for hearing and allocate to a Judge for pre-trial case management. This practice does not apply to matters filed in the Administrative and Industrial Law List, the Possession List and the Professional Negligence List.
64. When a case is ready for a hearing the parties should be in a position to advise the Chief Judge in relation to the following matters:
 - (a) the available dates of counsel, instructing solicitors and witnesses;
 - (b) the availability of expert witnesses for conclaves and preparation of a joint report following the conclave;
 - (c) a reliable estimate of the length of the hearing;
 - (d) whether there is a need for expedition;
 - (e) whether there are overseas, interstate or country witnesses proposed to be called;
 - (f) whether there is a need for audio visual facilities;
 - (g) whether the case has been mediated;
 - (h) whether the case should be heard in part or in whole at a venue other than Sydney;

- (i) any outstanding issues on which directions are required;
 - (j) the need for interpreters.
65. Matters ready for hearing will usually be listed for hearing by the Chief Judge.
66. At the time of allocation of a hearing date the Court will make the Usual Order for Hearing as set out in Annexure "A".
67. Once the matter is listed for hearing, case management to the extent necessary will be conducted by a Judge to be allocated by the Chief Judge.
68. Listings can be viewed on the case via the Online Registry or via the Online Registry's Court Lists (within two weeks of the hearing) or on the published Court List on the Court's website after 3:30 PM the day before the hearing.
69. Judges and Court Rooms may not be allocated until the day before the hearing. The Court Room should be checked on the day of the hearing.

Vacating Hearing Dates

70. All applications to vacate a hearing date must be made immediately upon the party seeking to have the trial date vacated becoming aware of the existence of the grounds that will be relied upon in seeking such an order. Such applications should be discussed with the other parties to the proceedings before the Court is approached.
71. Other than in exceptional circumstances, such applications must be made by motion supported by affidavit.
72. The application will be listed on a date suitable to the Court. It may be heard by the Duty Judge, the appropriate List Judge or the Trial Judge if allocated. Where a hearing date for the substantive proceedings is set, motions to vacate are usually determined by the Duty Judge.
73. Applications to vacate a trial hearing should not be made at the hearing other than in exceptional circumstances.
74. Applications to vacate a specially fixed motion are usually dealt with by the appropriate List Judge or the Registrar.
75. Other than in exceptional circumstances, such applications should not be made at the hearing of the motion.
76. Such applications must be made in writing supported by an affidavit and listed before the List Judge or Registrar to hear from the parties and make appropriate orders.

Applications by Motions

77. Applications must be brought by motion supported by an affidavit. Motions will be returnable before the appropriate List Judge or Registrar in the Directions List or in appropriate cases before the Judge case managing the matter.
78. Where motions are expected to take more than two hours to hear, the Registrar will either allocate a hearing date or refer the matter to the Manager, Listings.
79. Motions that will take less than two hours to hear and which are ready to proceed will be referred to the Duty Judge at 10:00 AM. The Duty Judge will then give an indication as to when the matter is likely to be heard during that week.

80. Motions that are within the Registrar's delegated powers will be allocated a date for hearing before the Registrar and orders made for their preparation.

T F BATHURST AC

Chief Justice of New South Wales

21 May 2020

Related Information:

Practice Note SC CL 5 Supreme Court Common Law Division – General Case Management List

Practice Note SC CL 6 Supreme Court Common Law Division – Possession List

Practice Note SC Gen 1 Supreme Court – Application of Practice Notes

Practice Note SC Gen 6 Supreme Court – Mediation

Supreme Court Rules 1970

Civil Procedure Act 2005

Uniform Civil Procedure Rules 2005

Amendment History:

18 May 2020: This Practice Note replaces former Practice Note SC CL 1 which was issued on 8 May 2018.

8 May 2018: This Practice Note replaces former Practice Note SC CL 1 which was issued on 17 August 2005. 17 August 2005: Practice Note SC CL 1 was issued and commenced on 17 August 2005.

Annexure A

- (a) Expert evidence to be given concurrently, if not already ordered.
- (b) Orders for Experts in their respective areas of expertise to confer and engage in a conclave by a specific date and provide a Joint report on matters agreed or disagreed setting out the reasons for their disagreement by a Court ordered date.
- (c) Where evidence is to be given by way of affidavit or witness statement, the parties are to discuss and as far as possible agree on any objections to the affidavits or statements. A schedule of any disputed objections is to be filed no later than seven working days before the hearing. The Trial Judge will rule on any remaining objections.
- (d) The parties are to file and serve a final joint Memorandum of Issues and facts which are agreed and those which are disputed together with a Chronology signed by Counsel by no later than 10 working days before the hearing.
- (e) The parties are to file and serve Affidavits as to Readiness for Hearing by a prescribed date.
- (f) The parties are to file and serve written submissions by no later the seven working days before the hearing.
- (g) The parties to file a Joint Court Book by no later than three working days before the hearing.

Additional Standard directions for Personal Injury Matters listed for hearing

- (h) The plaintiff is to serve at least four weeks prior to the hearing a draft schedule of damages, outlining in detail the heads of damage, and what damages are likely to be in the event of liability being established.
- (i) Prior to the hearing the parties are to confer about the schedule of damages. The plaintiff must also file and serve the final schedule of damages showing what is agreed and, if not, the competing position of the parties at least two working days before the hearing.



PRACTICE NOTE SC CL 3

SUPREME COURT COMMON LAW DIVISION – ADMINISTRATIVE AND INDUSTRIAL LAW LIST

Commencement

1. This Practice Note was issued on 21 May 2020 and commences on 25 May 2020.

Application

2. This Practice Note applies to proceedings in, or to be entered in, the Administrative and Industrial Law List (the List).

Introduction

3. The Court exercises statutory and supervisory jurisdiction by way of judicial review with respect to public bodies and officials and various tribunals either by way of appeal or by application. *Uniform Civil Procedure Rules 2005* (UCPR) Part 59 applies to judicial review proceedings in this Court. The Court also exercises jurisdiction with respect to those matters which were formerly dealt with by the Industrial Court, which are included in the List.
4. The purpose of this Practice Note is to explain the operation of the List.

Proceedings that are to be allocated to the List

5. There are three categories of case that are dealt with in the List:
 - statutory appeals (where the jurisdiction of the Court depends on an error of law, or a question of law), other than appeals from the Local or District Courts;
 - proceedings under s 69 of the *Supreme Court Act 1970* (NSW): specifically challenges based on an error of law on the face of the record; or jurisdictional error (“administrative law matters”); and
 - matters under the *Industrial Relations Act 1996* (NSW) that were formerly dealt with by the Industrial Court (also known as the Industrial Commission in Court Session) (“industrial matters”).

Commencing proceedings in the List

6. Proceedings in administrative matters are generally commenced by summons.
7. In administrative matters, the words, "Administrative Law List" should be added immediately under the words, "Common Law Division" on the front page of the originating process and all other documents filed. In industrial matters, the words: "Administrative Law List – Industrial" should be added immediately under the words, "Common Law Division" on the front page of the originating process and all other documents filed.

8. Upon commencement, administrative law proceedings are automatically entered in the List pursuant to UCPR r 45.3. If not so commenced, they may be transferred to that list pursuant to UCPR r 45.2.

Urgent applications

9. Urgent applications, such as applications for ex-parte injunctions and/or leave to serve short notice of proceedings which on commencement will be appropriate for entry in the List, should be made to the Administrative and Industrial Law List Judge or, if he or she is not available, to the Common Law Duty Judge for that week. Depending on the urgency of the matter, the Judge who deals with the urgent application will normally make the proceedings returnable in the ordinary Directions List before the Registrar and will require a summons and affidavit to be filed and served.

Directions hearings

10. When the proceedings come before the Court for directions, all parties should be represented by someone familiar with the case so that the Court can give directions to enable the case to be prepared for hearing. Such directions will typically include dates for the filing of affidavits, particulars and/or production of documents (if necessary) and the determination of any interlocutory issues, as well as directions for the filing of written submissions. Any timetable fixed should be adhered to so as to avoid unnecessary appearances in the Directions List and the costs occasioned with such appearances. If a party is in default in adhering to the timetable set and such default necessitates additional appearances in the Directions List, consideration may be given to ordering the party in default to pay the costs of the additional appearances.
11. Any matters that are not ready for referral to obtain a hearing date within 3 months of the first directions date are to be referred to the Administrative and Industrial Law List Judge who shall case manage such matters until they are ready to be fixed for hearing.

PROCEDURE IN ADMINISTRATIVE MATTERS

Time limit for commencing proceedings in administrative matters

12. Proceedings by way of statutory appeal from an administrative tribunal pursuant to the provisions of the Act constituting the relevant tribunal are governed by UCPR Part 50. Such appeals must be instituted within 28 days: UCPR r 50.3. In such cases a statement of the grounds relied on must be served with the summons: UCPR r 50.4.

Parties in administrative matters

13. Unless there is a statutory provision to the contrary, the relevant tribunal, public body or official must be made a party to the proceedings and served with a copy of the summons. Where such tribunal or public body or official files a submitting appearance such tribunal, public body or official need not be represented at any directions hearing or substantive hearing and is automatically excused from further attendance: UCPR rr 6.10 and 6.11. If another party wishes to seek an order for costs against a submitting defendant, it must prior to such directions hearing, or within such further time as the Court may allow, give notice in writing to such submitting defendant setting out the grounds upon which such costs order will be sought: UCPR r 6.11.

Evidence in administrative matters

Statutory appeals concerning errors, or questions of law

14. In the case of statutory appeals concerning errors of law the parties are referred to UCPR r 50.14. Where there is no allegation of denial of procedural fairness, in the ordinary course (bearing in mind the limited nature of the appeal) the only evidence necessary is a copy of the reasons below, a copy of the transcript in the proceedings in the Court below and a copy of any exhibit or affidavit or other documents from the proceedings below “that the plaintiff wishes to be considered at the hearing of the appeal” (UCPR r 50.14(c)).

Appeals limited to errors of law on the face of the record

15. In proceedings where the grounds of review are limited to errors of law on the face of the record (such as proceedings under s 69 of the *Supreme Court Act*), the evidentiary material should be limited to material that constitutes the “record”: *Craig v State of South Australia* (1995) 184 CLR 163 at 180-183; [1995] HCA 58. Usually the record does not include the evidence that was adduced before the decision-maker or the transcript of the hearing, but does include the reasons, if any, of the “court or tribunal for its ultimate determination”: s 69(4) of the *Supreme Court Act*.

Appeals based on jurisdictional error

16. If a plaintiff contends that a decision or action is affected by jurisdictional error then that error should be identified as such in the summons. If reliance is sought to be placed on material beyond that which constitutes the record, the body of the affidavit to which such material is annexed or exhibited must identify the jurisdictional error alleged and the connection between the additional material and the alleged error.

“No evidence” ground

17. Where the plaintiff relies on a “no evidence” ground, it is not necessary, in the absence of a direction to that effect, for the plaintiff to tender all the evidence before the decision maker in order to prove the absence of evidence to support a finding. Instead, in the summons, the plaintiff should identify with particularity the finding of the tribunal or decision-maker which the plaintiff contends was not supported by any evidence.
18. At the first return date, the parties are to confer about a direction by which any evidence relied on by the defendant in support of the finding is to be adduced. Failing agreement, the parties are to raise the matter before the Court.

Consequences of non-compliance

19. Failure to comply with these principles regarding the evidence to be adduced in such proceedings may result in special costs orders. The parties are referred to *Insurance Australia Ltd t/a NRMA Insurance v Milton (No 2)* [2016] NSWCA 173 at [7]-[12].

PROCEDURE IN INDUSTRIAL MATTERS

Originating process

20. UCPR r 6.3 provides that statement of claim is required to commence the following proceedings under the *Industrial Relations Act*:
 - (1) a claim for an order under s 106 that a contract is unfair (UCPR r 6.3(i));
 - (2) proceedings to recover a civil penalty under s 357 (UCPR r 6.3(j)); and
 - (3) a claim for remuneration or other amounts under Part 2 of Chapter 7 (UCPR r 6.3(k)).
21. The statement of claim for proceedings for a civil penalty under s 357 must be verified and state the matters set out in SCR, Sch J.
22. Applications under Chapter 5 of the *Industrial Relations Act* are to be commenced by summons: UCPR r 6.4(h1).
23. Proceedings under s 139 (for applications concerning contraventions of dispute orders) of the *Industrial Relations Act* require two summons: a commencement summons, which is filed, and a show cause summons (a draft of which is filed with the commencement summons): SCR, Sch J. A precedent of the show cause summons is available on the Supreme Court website. A supporting affidavit must be filed with the commencement summons. Where an application is urgent, the application is to be made before the Duty Judge or, by prior arrangement and subject to availability, before the Administrative and Industrial Law List Judge.

Conciliation required for recovery proceedings under Part 2 of Chapter 7

24. As the Court is not to make an order under Part 2 of Chapter 7 of the *Industrial Relations Act* until the parties satisfy the Court that they have unsuccessfully attempted to settle the matter by a conciliation conducted by the Industrial Relations Commission (s 371 of the *Industrial Relations Act*), the parties are to approach the Commission for conciliation and attempt to settle the matter by conciliation. If they fail to do so, the Court will refer the proceedings to the Commission for conciliation: UCPR, Part 20, Division 3A.

Costs of recovery proceedings under Part 2 of Chapter 7

25. Where proceedings under Part 2 of Chapter 7 that could have been commenced in the Local Court have been commenced in the Supreme Court, a costs order will not ordinarily be made unless the Court is persuaded that the commencement and continuation of the proceedings in this Court was warranted: UCPR 42.34(2)(b).

T F BATHURST AC

Chief Justice of New South Wales

21 May 2020

Related Information

See also:

Practice Note SC Gen 1 Supreme Court – Application of Practice Notes

Practice Note SC Gen 4 Supreme Court – Affidavits

Supreme Court Rules 1970

Supreme Court Act 1970

Uniform Civil Procedure Rules 2005

Amendment History

21 May 2020: This Practice Note replaces the previous version of SC CL 3 that was issued on 8 December 2016.

8 December 2016: This Practice Note replaces the previous version of SC CL 3 that was issued on 16 July 2007.

16 July 2007: This Practice Note replaced the previous version of SC CL 3 that was issued and commenced on 9 July 2007.

9 July 2007: This Practice Note replaced the previous version of SC CL 3 that was issued and commenced on 17 August 2005.

17 August 2005: This Practice Note replaced Former Practice Note No.119.



PRACTICE NOTE SC CL 4

SUPREME COURT COMMON LAW DIVISION - DEFAMATION LIST

Commencement

1. This Practice Note was issued on 21 May 2020 and commences on 25 May 2020.

Purpose

2. The purpose of this Practice Note is to explain the operation of the Defamation List in the Common Law Division.

Definitions

3. In this Practice Note:

Chief Judge means the Chief Judge at Common Law or any judge nominated to perform duties on behalf of the Chief Judge.

CPA means Civil Procedure Act 2005.

List means the Defamation List.

List Judge means the Judge appointed by the Chief Justice to be the List Judge for the Defamation List.

UCPR means the Uniform Civil Procedure Rules 2005.

Application

4. This Practice Note applies to all new and existing proceedings for defamation.

Defamation List

5. Proceedings that include a claim for defamation are entered in the List and case managed by the List Judge.
6. The List is conducted each Friday during court term.
7. The List is conducted with the aim of achieving the just, quick and cheap resolution of the real issues in the proceedings and promoting the objects of the Defamation Act 2005.

8. Any urgent application for an injunction to restrain the publication of defamatory matter should be made in the first instance to the List Judge. If the List Judge is unavailable the application should be made to the Common Law Duty Judge rather than in the Equity Division.

Pleadings

9. Any pleading filed in proceedings in the List must be endorsed with the words "Defamation List" in the court details for the pleading.
10. At the filing of a Statement of Claim for defamation, the Court will fix a first listing date before the List Judge not less than 35 days from the date of filing. The Statement of Claim is expected to be served expeditiously after being filed.
11. It is expected that all pleading requirements and necessary particulars for a claim in defamation, including the matters addressed in rules 14.30, 15.19, 15.20 and 15.32 of the UCPR, will be included in the Statement of Claim.
12. Before the first listing date:
 - (a) the defendant must notify the plaintiff in writing of any objection to the form of the pleading and any objection that the matter complained of is not capable of conveying any of the imputations pleaded by the plaintiff;
 - (b) the plaintiff must respond in writing to any such objections, indicating as to each objection whether it is accepted or rejected (with brief reasons where appropriate) ;
 - (c) the defendant must give notice in writing to the Associate to the List Judge of any objection maintained by the defendant.
13. At the first listing:
 - (a) the parties will be expected to be ready to argue any objections to the Statement of Claim maintained by the defendant;
 - (b) the defendant will be required to inform the Court whether the element of publication is admitted; if so, the admitted scope of publication and, if not, the reason publication is not admitted.
14. Upon the determination of any objections to the Statement of Claim raised at the first listing, the Court will make directions for the filing of a defence and any reply and will stand the proceedings over for a second listing in the List.
15. It is expected that all pleading requirements and necessary particulars of a defence and a reply, including the matters addressed in Division 6 of Part 14 and Division 4 of Part 15 of the UCPR , will be included in those pleadings.

Further interlocutory steps

16. At the second listing, the parties:
 - (a) will be expected to be ready to argue any objections to the defence and the reply;

- (b) will be afforded an opportunity to demonstrate the need for any further interlocutory step before the matter is listed for hearing.
17. In determining the need for any further interlocutory step, the Court:
- (a) may order the parties to serve their evidence;
 - (b) may order the parties to disclose limited categories of documents but will do so only if such an order is necessary for the resolution of the real issues in dispute in the proceedings;
 - (c) will not order any party to answer interrogatories except where , after considering the draft proposed interrogatories, the List Judge forms the view that they are necessary for the resolution of the real issues in dispute in the proceedings.
18. No application for any further interlocutory step (apart from the service of evidence) will be entertained unless the party seeking the order has given reasonable notice in writing to the opposing party and the Associate to the List Judge. Subject to the direction of the List Judge, any such application, whether by consent or otherwise, must be supported by an affidavit:
- (a) succinctly stating the reason the party contends the order is necessary for the resolution of the real issues in dispute in the proceedings;
 - (b) in an application for disclosure of documents, identifying the classes of documents sought and the likely cost of such disclosure;
 - (c) in an application for an order to answer interrogatories, stating why interrogatories are considered necessary for the resolution of the real issues in dispute in the proceedings and attaching draft proposed interrogatories.
19. Upon the determination of any issues raised at the second listing, the matter will be referred to the Chief Judge. If the Chief Judge is also satisfied that the matter is ready for hearing, the Chief Judge will allocate a hearing date.

Reasons

20. In determining applications in the List, the Court will ordinarily give reasons in short form.

Show cause hearings

21. A plaintiff who fails to comply with this Practice Note or a direction of the Court may be called upon to show cause why the proceedings should not be dismissed under s 61 of the CPA or rule 12.7 of the UCPR.
22. A defendant who fails to comply with this Practice Note or a direction of the Court may be called upon to show cause why any defence filed should not be struck out and judgment given accordingly under s 61 of the CPA or rule 12.7 of the UCPR.

Proportionality

23. In determining any matter in the List, including any show cause hearing under clause 21 or 22 above, the Court will have regard to the principle of proportionality reflected in s 60 of the CPA.

Costs

24. Parties are reminded that costs in proceedings under the Defamation Act 2005 are governed by s 40 of the Act, which provides that costs are awarded with regard to the way in which parties conduct their cases and imposes costs sanctions in the event of unreasonable failure to engage with the prospects of settlement out of court.
25. In cases in which it appears to the Court that a party has made or opposed an interlocutory application unreasonably, and subject to hearing from the parties, the Court will consider making an order under rule 42.7(2) of the UCPR that the opposing party's costs of the application be payable forthwith.

T F BATHURST AC

Chief Justice of New South Wales
21 May 2020

Related information

See also:

Practice Note SC CL 1 Supreme Court Common Law Division – General

Practice Note SC Gen 1 Supreme Court – Application of Practice Notes Practice Note SC Gen 4

Supreme Court – Affidavits

Practice Note SC Gen 11 Supreme Court – Joint conferences of expert witnesses

Civil Procedure Act 2005

Uniform Civil Procedures Rules 2005

Defamation Act 2005

Amendment history:

21 May 2020: This Practice Note replaced the previous version of SC CL 4 that was issued on 5 September 2014.

5 September 2014: This Practice Note replaced the previous version of SC CL 4 that was issued on 17 August 2005.

17 August 2005: This Practice Note replaced Former Practice Note Nos. 85 and 114 on 17 August 2005.



SUPREME COURT PRACTICE NOTE SC CL 6

SUPREME COURT COMMON LAW DIVISION – POSSESSION LIST

Commencement

1. This Practice Note was issued on 21 May 2020 and commences on 25 May 2020.

Application

2. This Practice Note applies to proceedings in, or to be entered in, the Possession List.

Definitions

3. In this Practice Note:

ADR means alternative dispute resolution

List means the Possession List

List Judge means the Judge appointed by the Chief Justice to be the List Judge for the Possession List in the Common Law Division

Registrar, CLCM means the Registrar, Common Law Case Management

UCPR means the Uniform Civil Procedure Rules 2005

4. In this Practice Note ADR includes:
 - (a) mediation;
 - (b) arbitration; and
 - (c) referral to a referee under UCPR Part 20.

Introduction

5. The purpose of this Practice Note is to explain the operation of the List, which is provided for by UCPR Rule 45.4.

6. UCPR Rule 45.4(1) specifies that, subject to exceptions in Rule 45.4(2), proceedings in the Common Law Division in which a claim for possession of land is made are to be entered in the List.

Short form of Statement of Claim

7. In the case of a claim for possession, or possession and debt, against a Defendant who is a borrower/mortgagor, it is open to the Plaintiff to commence proceedings by filing a short form of Statement of Claim in accordance with [Annexure 1](#) of this Practice Note. The principal purpose of the short form is to provide a simplified form of pleading to facilitate an understanding by the Defendant of the nature of the claim which is brought and of the practical consequences which may result.
8. The short form is not a prescribed form, nor is its use compulsory. A Plaintiff may commence proceedings by way of a Statement of Claim pleaded in conventional form, in particular where the claim is not straightforward and involves additional parties (including guarantors). It is necessary for a Statement of Claim, whether or not in short form, to comply with the requirements as to pleadings contained in UCPR Rule 14.15.

Cover sheet to Statement of Claim

9. A cover sheet in the approved form (Form 93), which incorporates information for the Defendant translated into several different languages, is required by UCPR Rule 6.8A to be used with all initiating process in the Possession List, including both the conventional form and short form of Statement of Claim.

Removal from the list

10. Upon proceedings being removed from the List, this Practice Note shall not, subject to paragraph 11 below, apply to the proceedings from the making of the order.
11. The Court may direct that this Practice Note shall continue to apply to the proceedings to the extent stated in the direction.
12. The making of an order removing proceedings from the List shall not affect any orders made or directions given prior to such removal.

Directions hearings

13. Defended proceedings in the List will be managed by way of Directions Hearings which will be conducted by the List Judge or another judge who is allocated to case manage the proceedings.
14. Upon a Defence or a Cross-Claim being filed, the registry will give notice to all parties with an address for service in the proceedings of the date for the Initial Directions Hearing before the List Judge.

Action prior to initial Directions hearing

15. It is expected that, where practicable, the parties' solicitors will have discussed the case before the Initial Directions Hearing before the judge case managing the proceedings and will have:
 - (a) narrowed issues;
 - (b) agreed on suitable interlocutory orders, directions or arrangements;
 - (c) prepared a draft timetable for the future management of the proceedings; and
 - (d) discussed the possibility of settling the dispute by mediation or other ADR processes.
16. At the Initial Directions Hearing, the List Judge may make such orders as are appropriate in the circumstances.

Purpose of Judicial Directions Hearing

17. A Judicial Directions Hearing of defended matters is intended to achieve the following:
 - (a) to allow the Judge to scrutinise, at an early time, the issues raised in the proceedings including the nature of the Defence and any Cross-Claim - if no reasonable defence on the merits is disclosed, the Judge may consider striking out the Defence at that time, whether or not a Notice of Motion seeking such an order has been filed and served;
 - (b) identification of steps which are required to facilitate the just, quick and cheap resolution of the real issues in the proceedings: s.56 Civil Procedure Act 2005;
 - (c) early examination of the likelihood of a Cross-Claim or joinder of other parties to the proceedings - if a party indicates that consideration is still being given to the joinder of other parties (including the issue of a Cross-Claim), the Court will expect a clear explanation as to the steps being taken in this respect, and the time within which any application will be made;
 - (d) the Court will consider a referral to mediation under Part 4 (ss.25-34) Civil Procedure Act 2005, given the advantage of mediation occurring at a time before costs and interest have accumulated.
18. At the Judicial Directions Hearing the Judge may:
 - (a) order that the proceedings be referred for mediation: s.26 *Civil Procedure Act 2005*;
 - (b) adjourn a matter for further directions before that Judge, if that is considered appropriate to facilitate the just, quick and cheap resolution of the real issues in the proceedings (including by way of mediation);

- (c) allocate a hearing date;
- (d) otherwise refer the matter to the Manager, Listings to obtain a hearing date;
- (e) consider any application which a party has notified (orally or in writing) to other parties as being an application which may be made, including an application to strike out a pleading or an application for summary judgment or default judgment, whether or not a Notice of Motion seeking such an order has been filed and served - if default judgment is to be sought, the Plaintiff must ensure that all necessary affidavits are in Court to allow the application to proceed.

Representation

19. Each party not appearing in person must be represented at each Directions Hearing by a barrister or a solicitor familiar with the subject matter of the proceedings and with instructions sufficient to enable all appropriate orders and directions to be made.

Action at Directions hearing

20. At a Directions Hearing, the Court may give directions and make orders as it considers appropriate with a view to the just, quick, cheap and effective management and disposal of the proceedings. Orders or directions may include:
- (a) if the List is not the most appropriate place for the proceedings, the removal of the proceedings from the List, with consequential orders and directions;
 - (b) setting a timetable for case management;
 - (c) for the whole or any part of the evidence in the proceedings to be given on affidavit;
 - (d) for adjournment of the Directions Hearing;
 - (e) the filing of other pleadings;
 - (f) the provision of any particulars;
 - (g) the making of admissions;
 - (h) the filing of lists of documents;
 - (i) the provision of copies of documents;
 - (j) the administration and answering of interrogatories;
 - (k) the service and filing of affidavits or statements of evidence;
 - (l) orders for the preservation of evidence;
 - (m) hearing of applications for summary disposal under UCPR Part 13 or for judgment on admissions;

- (n) applications under UCPR Part 14 or Part 15 which relate to pleadings and particulars;
- (o) matters relating to proof; and
- (p) the provision of any further information to the Court;
- (q) the making of any order or judgment under UCPR Rule 16.3 (default judgment) including an order granting possession of land.

Interlocutory applications

21. Interlocutory applications are not encouraged. Motions may not be filed without leave. Subject to paragraph 22, leave must be obtained from the List Judge or judge case managing the proceedings. Leave may be obtained by oral application at a directions hearing or by email to the associate of the judge case managing the proceedings. If leave is granted the judge case managing the proceedings will advise when the motion is to be made returnable before them.
22. The following applications do not require leave before filing and will be dealt with in chambers by a registrar where appropriate or listed for directions before the Registrar, CLCM:
 - (a) Extensions of time to serve a statement of claim;
 - (b) Substituted service;
 - (c) Default judgment;
 - (d) Enforcement applications;
 - (e) Setting aside default judgment pursuant to UCPR 36.16;
 - (f) Stay on the execution of a writ of possession that is within a registrar's power to determine.

Alternative dispute resolution

23. At a Directions Hearing the Court will consider whether the proceedings are suitable for ADR. Legal practitioners should ensure that instructions have been obtained prior to a Directions Hearing so that it may be indicated to the Court whether the matter can be mediated.
24. If the matter appears to the Court to be appropriate for resolution by mediation, the Court will refer the proceedings for mediation with or without the consent of the parties.
25. The Court may give directions requiring statements from parties including a timetable to enable parties to be prepared for mediation.

Call-Up of delayed defended matters

26. The List Judge may from time to time convene a call-up of defended matters in which there is no listing for final hearing or referral for mediation and (subject to the

determination of the List Judge in a particular case) more than nine months have elapsed since the filing of a Defence or Cross-Claim. At the call-up, the parties and/or their legal representatives will be required to explain to the Court why the matter has not been listed for final hearing and what steps have been and are being taken to comply with the parties' statutory duty to assist the Court to further the overriding purpose of the Civil Procedure Act 2005 and the UCPR of facilitating the just, quick and cheap resolution of the real issues in the proceedings (s.56 Civil Procedure Act 2005). The Court will have regard to the guiding principles contained in ss.56-60 Civil Procedure Act 2005 and will utilise appropriate case-management measures with a view to eliminating unreasonable delay between the commencement of proceedings and their final determination (s.59).

Usual order for hearing

27. When ready for trial, proceedings will either be listed for hearing by the List Judge or referred to the Manager, Listings to obtain a hearing date. In such cases the Usual Order for Hearing set out in [Annexure 3](#) is deemed to be made unless the Court otherwise orders. Where the Court otherwise orders, the Court may direct that one or more of the requirements of the Usual Order for Hearing be complied with. Ordinarily a joint statement of matters of fact and law in dispute will be directed. Cases where the Court may otherwise order include cases where one or more party is unrepresented or cases estimated to last no more than one day.

Non-urgent applications for stay

28. A non-urgent application to stay the execution of a writ of possession arises where no time has been fixed for the Sheriff to take possession of the property or such time has been fixed and that time is more than four working days from the time when application is brought to stay the execution of the writ. In these circumstances, the application should be brought by Notice of Motion and Affidavit in support, to be served on the opposing party, with the application to be listed for hearing before the Registrar, CLCM. Annexed to the affidavit should be any documents to be relied upon by the applicant, such as:
 - (a) where the loan is to be refinanced – proof of steps undertaken to refinance;
 - (b) where the subject property is to be sold – copies of agent sale agreements, contract for sale of property, advertisements, etc.;
 - (c) where the proceedings are to be defended – a draft Defence; and
 - (d) where hardship is claimed - the facts and circumstances relied upon in this regard.

In the event that an order abridging time for service of the Notice of Motion and Affidavit is required, application for such an order should be made to the Duty Registrar who is available by appointment from 9.30 am to 4.30 pm each weekday.

Urgent applications for stay

29. Urgent applications to stay the execution of a writ of possession arise where a time has been fixed for the Sheriff to take possession of the property and that time is less than four working days from the time of the stay application. In those circumstances, application should be made to the Duty Registrar who is available from 9:30am to 4.30pm each weekday or by lodging the application through the online registry website. Applicants should ordinarily produce an affidavit in support annexing documentary material, such as:
- (a) where the loan is to be refinanced – proof of steps undertaken to refinance;
 - (b) where the subject property is to be sold – copies of agent sale agreements, contract for sale of property, advertisements, etc.;
 - (c) where the proceedings are to be defended – a draft Defence, and
 - (d) where hardship is claimed - the facts and circumstances relied upon in this regard.
30. A Duty Registrar determining an urgent stay application on an ex parte basis may order that the execution of a writ of possession be stayed for a period (usually not exceeding seven working days) and direct the applicant to file and serve a Notice of Motion seeking appropriate orders and an Affidavit in support of the motion, and may abridge time for service of any order and motion, and list the matter before the Registrar, CLCM. In the event that an ex parte stay is granted, the Duty Registrar should record short reasons for granting the stay by reference to the relevant circumstances referred to in paragraph 29.
31. In the ordinary course, an officer of the Court will inform the Sheriff if an ex-parte stay has been granted and will provide the Plaintiff's solicitor by email with copies of the Court order and any affidavit relied upon on the stay application.
32. In the case of an applicant who has previously been granted a stay, unless there is good reason not to do so, the Duty Registrar should stand down an urgent application, and require the applicant to notify the Plaintiff that application for a stay is to be made so as to permit that party an opportunity to appear on the application. Where the Plaintiff does not oppose an urgent stay application, the Duty Registrar should determine the application. Where the Plaintiff opposes an urgent stay application, the Duty Registrar should refer the application to the Registrar, CLCM, so that the application may be heard and determined in open court.

Stay applications generally

33. The Duty Registrar or Registrar, CLCM, must refer the proceedings to the Duty Judge for consideration where a Judge has refused the applicant a stay on an earlier occasion.

34. The Duty Registrar or Registrar, CLCM, may refer the proceedings to the Duty Judge for consideration:
 - (a) where the Duty Registrar or Registrar, CLCM, is not prepared to grant a stay to the applicant, or
 - (b) where the Registrar, CLCM, is not in a position to hear an urgent and opposed stay application which has been referred by the Duty Registrar in accordance with paragraph 32.
35. Apart from the circumstances referred to in paragraphs 33 and 34 above, it is expected that all stay applications in Possession List matters will be considered and determined by the Registrar, CLCM or a Duty Registrar.
36. If a stay application is made directly to a Judge or to the Duty Judge, the applicant will be directed to the Duty Registrar.

Disposal of applications

37. For undefended matters, applications, to which all relevant parties consent, may be dealt with at any time by arrangement with the Registrar, CLCM.
38. For defended matters, applications, to which all relevant parties consent, may be dealt with at any time by arrangement with the List Judge or judge case managing the matter.
39. Applications for summary disposal will be listed for a Directions Hearing before the List Judge for determination.
40. Applications to set aside default judgment will be heard by the Registrar, CLCM.

Listing for hearing

41. When ready for trial, proceedings will be listed for hearing by the List Judge or referred to the Manager, Listings to obtain a date for hearing with no priority over other proceedings unless an order for expedition is made.
42. All applications for expedition should ordinarily be made in the first instance to the List Judge or judge case managing the matter.

Adjournment

43. To ensure efficient use of Court time, proceedings fixed for trial will not normally be adjourned unless special circumstances have arisen which could not have been foreseen.
44. An application for adjournment requires supporting affidavits.

45. An application for adjournment will not usually be granted unless the party on whose behalf the application is made is present at the time the application is made or has sworn an affidavit verifying that that party is aware of the reasons for the application and identifying those reasons.

Inactive proceedings

46. If a Defence or application for default judgment is not filed within 6 months of the claim being instituted, the Court may dismiss the proceedings on its own motion pursuant to UCPR Rule 12.8.
47. The Court will dismiss the claim (or where appropriate, the proceedings) without notice where it appears from the Court's records that, for over 9 months, no party to the proceedings has taken any step in the proceedings, unless the Plaintiff notifies the Court of its desire to show cause why an order for dismissal should not be made. Requests to show cause may be made through the online registry website or by emailing sc.inactivecases@justice.nsw.gov.au.
48. The Court may, if the Plaintiff gives notice in accordance with paragraph 47, list the proceedings for further consideration by the Registrar, CLCM in the Online Court or the List Judge, and notify the Plaintiff of such listing, and on the occasion listed, the Court may make such order as is appropriate, including dismissal of the claim or the proceedings.
49. Paragraph 46 does not apply to proceedings, or to a claim, that have or has been disposed of by judgment, final order, discontinuance or dismissal.
50. Unless the Court otherwise orders, where proceedings have been dismissed under UCPR Rule 12.8 and the Plaintiff applies to have the dismissal set aside with the matter restored to the List, application is ordinarily to be made by Notice of Motion and affidavit in support, to be served upon the Defendant and made returnable before the Registrar, CLCM in the Online Court.

Summary disposal

51. An application for summary disposal, made after proceedings are listed for hearing will be heard at the same time as the substantive proceedings, unless the Court otherwise orders.

Default judgment

52. Entry in the List will not affect a party's entitlement to apply for default judgment.

Applications to extend the time for service of the statement of claim

53. Pursuant to UCPR Rule 6.2 (4)(a) a statement of claim is valid for service on the defendant for 6 months from the date of filing. An application to extend this period may be made to the Registrar, CLCM without filing or serving a notice of motion.

Applications must be by affidavit lodged through the online registry website and set out the extended period of time that is sought, and the reason why an extension of time is required. If the extension of time is required as a result of a stay pending an investigation by an Ombudsman then an affidavit is not required. In all other cases an affidavit must be provided. Only one application for extension of time will be determined in chambers. Any subsequent application is to be made by filing a notice of motion with an affidavit in support which will be made returnable before the Registrar, CLCM for determination.

Contacting the registrar

54. Where a matter is eligible for the Online Court, all communication with the Registrar, CLCM must be conducted in accordance with the Online Court Protocol.

T F BATHURST AC

Chief Justice of New South Wales

21 May 2020

Related information

See also:

Practice Note SC CL 1 - Supreme Court Common Law Division – General

Practice Note SC Gen 1 - Supreme Court – Application of Practice Notes

Practice Note SC Gen 6 - Supreme Court – Mediation

Supreme Court Rules 1970

Uniform Civil Procedure Rules 2005

Amendment history

21 May 2020: This Practice Note replaces the previous version of SC CL6 issued on 6 February 2019.

6 February 2019: This Practice Note replaces the previous version of SC CL6 issued on 10 August 2012.

10 August 2012: This Practice Note replaces the previous version of SC CL6 issued on 19 March 2012; paragraph 27 replaced and Annexure 2 added; paragraph 52 amended to remove specific reference to the Financial Ombudsman.

19 March 2012: This Practice Note replaces the previous version of SC CL6 issued on 10 March 2010; paragraph 52 replaced and paragraph 53 added.

10 March 2010: This Practice Note replaces the previous version of SC CL6 issued on 2 November 2007.

2 November 2007: Practice Note SC CL 6 replaced the previous version of SC CL 6 issued on 17 August 2005.

17 August 2005: Practice Note SC CL 6 replaced Former Practice Note No. 106.

ANNEXURE 1

Supreme Court Short Form of Statement of Claim for Possession [and Debt] against a Borrower/Mortgagor

RELIEF CLAIMED
<ol style="list-style-type: none">1. Judgment for the Plaintiff, [name of Lender], for possession of the land comprised in [Title/Folio numbers] being the land situated at and known as [address].2. Judgment for the Plaintiff, [name of Lender], against the [role of party, eg Defendant] for \$[amount].3. The [role of party, eg Defendant] pay the Plaintiff's costs.]
PLEADINGS AND PARTICULARS
<ol style="list-style-type: none">1. You are the owner of property at [address/folio identifier etc].2. You obtained a loan from [name of Lender] on [date]. ["Lender"]3. You mortgaged your property as security for this loan by a mortgage [number].4. This mortgage means that if you default under your loan, the Lender can:<ol style="list-style-type: none">(a) take possession of your property; and(b) obtain a judgment against you for the amount you owe the Lender.5. You are in default of your loan by breach of [specify breach to comply with requirements concerning pleadings in Rule 14.15 Uniform Civil Procedure Rules 2005]. <p style="text-align: center;">Particulars of default</p> <p>Failure to pay the following amounts due [if applicable]. \$ due Non-monetary default by virtue of [if applicable]</p> <ol style="list-style-type: none">6. Notice of default pursuant to s80 of the Consumer Credit (New South Wales) Code, has been served. [if notice required] <p style="text-align: center;">Particulars</p> <p>Notice dated _____ OR</p> <ol style="list-style-type: none">6. Notice pursuant to s80 of the Consumer Credit (New South Wales) Code is not required. [if notice is not required]7. Given your default, the Lender now claims against you, judgment for:<ol style="list-style-type: none">(a) possession of your property.(b) the full amount of your loan, being \$.....as at.....[if claimed]; and(c) continuing interest and fees in accordance with the loan [if claimed];(d) costs.

[On a new page, replace the Notice to defendant and How to respond sections of the approved form of Statement of Claim with the following:]

NOTICE TO DEFENDANT AND HOW TO RESPOND
You may have a defence to the above claim.
If you do have a defence: <ol style="list-style-type: none">a. You must file a Defence within 28 days in the Supreme Court.b. If you fail to file a Defence within 28 days, judgment may be obtained against you.

If you are unsure whether you have any defence, it is in your interests to seek legal advice:

You may either:

- c. Telephone Law Access NSW on 1300 888 529 (a local call from anywhere in NSW), for free information or referral for legal advice (see www.lawaccess.nsw.gov.au); or
- d. Telephone the Law Society of NSW on 9926 0300 for the name of a private solicitor in your area.

If you do not have any defence:

- e. The Lender can obtain a judgment against you for possession and evict you from your property.
- f. The Lender may also obtain a judgment against you for the loan plus fees and expenses and take enforcement action against you to recover the judgment.
- g. The Lender may sell your property. It may be necessary for the Lender to have served on you a notice under section 57(2)(b) Real Property Act 1900 and for you to have not complied with it before the Lender can sell your property.
- h. If the property is sold for less than the amount of the loan, you may be liable for the remaining balance of the loan.

Voluntary surrender

- i. You may wish to voluntarily surrender your property to the Lender. If so, you should contact the Lender on
. This may result in a saving of costs.

Extension of time to vacate property

If you have no Defence, but wish to apply for an extension of time before you are required to vacate the property, you should also contact the Lender's Collection Manager or solicitor to request further time for you to vacate the property.

If you cannot reach agreement as to a date for vacating the property then you can apply to the Duty Registrar of the Supreme Court – Level 5, Law Courts Building, Queen's Square, Sydney for an extension of time, which may enable you to remain in the property, subject to certain conditions.

Any such application should show:

1. if the loan is to be refinanced – proof of steps undertaken to refinance – copies of any loan offer or refinance proposal;
2. if the subject property is to be sold – copies of agent sale agreements, contract for sale of property, advertisements, etc;
3. any other reason you have for seeking an extension of time.

ANNEXURE 2

Commencement

1. This Protocol commences on 6 February 2019.

Application

2. This Protocol applies to all matters in the Common Law Division Possession List.

Definitions

3. In this Protocol:

Judicial Officer means a Judge or Associate Judge of the Common Law Division or a Registrar.

Online Registry has the same meaning as in Part 3 of the *Uniform Civil Procedure Rules 2005 (NSW)*.

PDF means Portable Document Format.

Registered User means a person who has registered as a user of the Online Registry and the Online Court.

Request means a request using the Online Court for case management orders (including, but not limited to, timetables for the preparation of the matter for trial, referral to mediation, adjournment, referral to the List Judge, and scheduling a listing date).

UCPR means the *Uniform Civil Procedure Rules 2005 (NSW)*.

Availability of Online Court

4. The Online Court is available to all persons who are Registered Users.
5. Legal practitioners or self-represented litigants appearing in matters entered in the Possession List must be Registered Users. Registration and access to the Online Court is at <https://onlineregistry.lawlink.nsw.gov.au/>.

User Identification Code and Password

6. Each Registered User has a unique User Name and Password which must be kept secure.

7. When an Online Registry account is used to send a message or document using the Online Court, the person to whom that account was allocated is deemed to be the person who sent the message or document and is responsible for the contents.

Procedure

8. All matters in the Possession List that are returnable before the Registrar, CLCM, are automatically entered into the Online Court and will be managed in the Online Court unless the Court otherwise ordered.
9. Registered Users must submit Requests to the Registrar, CLCM by no later than 11:00 AM on the second day preceding the Online Court sitting. Counter requests and a consent to pending orders must be submitted by no later than 2:30 PM on the second day preceding the Online Court sitting.
10. Failing to submit requests or consent orders in the Online Court in accordance with the timeframes described in this Practice Note will be treated as a non-appearance in the proceedings. The Registrar, CLCM will issue a notice pursuant to rule 13.6 of the UCPR that any further non-appearance may result in the proceedings being dismissed.

Conduct in an Online Court

11. The Online Court is a virtual courtroom and must only be used for issues requiring consideration and determination by a Judicial Officer.
12. The Online Court must not be used for communications solely between the parties or their legal representatives.
13. It is expected that there will be adherence to professional etiquette and courtesy in the Online Court.
14. Undertakings given and orders made in an Online Court are binding as if given or made in open court.
15. All rules including those relating to contempt apply to proceedings conducted in the Online Court.

Terminating an Online Court

16. Any party may, by 11:00 AM on the second day preceding the Online Court sitting, submit a Request to the Registrar, CLCM for the matter to be dealt with in open court on the basis that the matter is not suitable to be dealt with using the Online Court.
17. A Judicial Officer may at any time order that any or all further hearings be conducted in open court or that matters in open court be conducted in the Online Courts.

Messages

18. Messages posted in an Online Court must be:
 - relevant to the topic under discussion;
 - concise; and
 - posted in a timely manner.
19. A Judicial Officer may, from time to time, give instructions as to:
 - the acceptable length of messages in an Online Court; and
 - the time and date by which messages must be received.

Documents

20. Documents may be attached to messages sent using the Online Court.
21. Documents cannot be filed using the Online Court. Documents must be filed in accordance with Parts 3 and 4 of the UCPR and should be filed using the Online Registry at <https://onlineregistry.lawlink.nsw.gov.au/>.
22. If an Online Court message refers to a document that has been filed, the document should be attached to the message. The message must indicate the date on which the document was filed and when a notice of acceptance of the document was given.
23. Documents sent using the Online Court must be in PDF and must not be locked.
24. If, for any reason, a matter is heard in open court, each party must bring to the court appearance all documents filed in the matter.

Transcripts

25. A free official transcript of an Online Court can be requested by emailing the Online Registry.
26. Requests by non-parties for a transcript will be referred to the Judicial Officer presiding over the Online Court for consideration.

ANNEXURE 3

By no later than 7 working days before the trial date the parties are to file a Court Book consisting of all pleadings, all evidence, any objections to evidence (limited to those that are essential having regard in particular to s 190(3) of the Evidence Act 1995), a clear, concise, joint statement of matters of fact and law that are really in dispute, and a short outline of submissions. The Court book is to be clearly marked on the front cover with the hearing date



PRACTICE NOTE SC CL 7

Supreme Court Common Law Division - Professional Negligence List

Commencement

1. This Practice Note was issued on 26 May 2020 and commences on 1 June 2020.

Application

2. This Practice Note applies to proceedings in, or to be entered in, the Professional Negligence List.

Definitions

3. In this Practice Note:

CPA means *Civil Procedure Act 2005*

Expert witness means a person engaged by a party or the parties jointly, or appointed by the court to give expert evidence in proceedings

List means the (Supreme Court) Professional Negligence List

List Judge means the Judge appointed by the Chief Justice to be the List Judge for the Professional Negligence List in the Common Law Division

PNL means the (Supreme Court) Professional Negligence List

Tender bundle means a bundle of documents that a party intends to rely on at the hearing

UCPR means the *Uniform Civil Procedure Rules 2005*

Introduction

4. The purpose of this Practice Note is to explain the operation of the List.
5. It is intended that proceedings in the Common Law Division that include a claim for medical or legal professional negligence, and other proceedings that the court considers suitable, will be entered in the List.

Removal from the List

6. Upon an order being made removing proceedings from the List, this Practice Note shall, subject to paragraph 7 below, not apply to the proceedings from the making of the order.

7. The Court may direct that this Practice Note shall continue to apply to the proceedings to the extent stated in the direction.
8. The making of an order removing proceedings from the List shall not affect any orders made or directions given prior to such removal.

Appointing Directions Hearing

9. Proceedings in the List will be managed by way of Directions Hearings, the first of which will be appointed for approximately 3 months after proceedings are entered in the List.
10. All proceedings in the List will be case managed by the List Judge or another judge assigned to case manage a matter.
11. Where proceedings are entered in the List pursuant to UCPR 45.1(1), the date of the first Directions Hearing will be given by the Registry in a notice issued at the time of filing to be served by the filing party. Where entered pursuant to an order, parties with an address for service will be advised of the date by the Registry.
12. At a Directions Hearing, proceedings may be listed at a specified future date for a further Directions Hearing.
13. Directions Hearings in relation to the List are held on the first Friday of every month before the List Judge.
14. Directions Hearings may be conducted by telephone. Parties wishing to avail themselves of this facility must advise the Sydney Registry at least three days prior to the date of the scheduled Directions Hearing. This written advice is to be forwarded to the "Common Law List Clerk" and must indicate a telephone number that the party or relevant legal representative wants to be called at for the Directions hearing. Such advice is to be sent by email to the Listings (Civil) email address set out on the contact us page on the Supreme Court website. Parties seeking a telephone Directions Hearing must ensure that the telephone number nominated is available from 10 minutes before the confirmed time of the Directions Hearing. A telephone Directions Hearing may not be available if the case involves multiple defendants that are separately represented and it is thought impractical to use the facility.

Action prior to first Directions Hearing

15. A statement of claim should be served promptly so as to allow ample time for Directions Hearing preparation. The requirements of UCPR 31.36 should be observed.
16. In proceedings being a claim for damages in respect of personal injuries, the provisions of UCPR Pt 15 Div 2 apply and must be complied with except to the extent varied by orders made by the court.
17. It is expected that the parties' solicitors will have discussed the case before the initial Directions Hearing and will have:
 - agreed on suitable interlocutory orders, directions or arrangements;
 - prepared a draft timetable for the future management of the proceedings; and
 - prepared draft short minutes of any orders or directions to be sought at the Directions Hearing.

18. It should be noted that indemnity costs may be awarded in respect of work necessitated by an unreasonable failure to provide access to or copies of medical or hospital records before or after commencement of proceedings.

Action at Directions Hearings

19. At a Directions Hearing the Court may give directions or make orders as it considers appropriate with a view to the just, quick and cheap disposal of the proceedings. The orders or directions may relate to:
- the provision of any further information;
 - the filing of other pleadings;
 - the provision of any essential particulars;
 - the making of admissions;
 - the filing of lists of documents;
 - the provision of copies of documents, including medical, hospital or legal records;
 - the administration and answering of interrogatories;
 - the service of statements of evidence as to matters of fact;
 - an early separate trial on liability;
 - proceedings to preserve evidence; and
 - the consent transfer of proceedings to the District Court;
20. Orders or directions relating to the provision of particulars, the filing of lists of documents and the administration of interrogatories will be made only upon demonstrated need being established in respect to particular matters.

Representation

21. Each party not appearing in person must be represented at any Directions Hearing by a barrister or a solicitor familiar with the subject matter of the proceedings and with instructions sufficient to enable all appropriate orders and directions to be made.

Mediation

22. At any Directions Hearing:
- the court may consider whether the proceedings are suitable for mediation and may direct the parties to confer upon this question;
 - if the matter appears to the court to be appropriate for resolution by mediation, the court will endeavour to secure the consent of the parties to a referral of the proceedings for mediation; and
 - if the parties consent to the referral, and agree as to who is to be the mediator, the court may give directions to enable the parties to be prepared for the mediation.
23. Proceedings may be referred to mediation by the court with or without the consent of the parties if it considers the circumstances appropriate.

Variation of directions and timetable

24. Case management directions given at a Directions Hearing and times set for compliance with any direction, may be varied:
 - (a) by consent of all parties, so long as such variation does not extend the time for compliance with any direction beyond the day specified by the court for compliance with the last direction made; or
 - (b) by the Court.
25. Where a party seeks a variation of the directions and timetable which is not consented to by all other parties or, where a party is in default in timely compliance with any direction, any party may apply to have a further Directions Hearing listed.

Applications

26. Applications may be made to the List Judge:
 - orally at a Directions Hearing;
 - on notice returnable at a Directions Hearing; or
 - by letter to the List Judge requesting that the proceedings be given a Directions Hearing and stipulating the reason, a copy of which is to be served in the same way as notice of a motion, and will not be included in the general applications list for the Division.
27. Applications may be made to the List Judge by way of notice of motion supported by affidavit(s).
28. Unless the Court otherwise directs, any such motion is to be made returnable on the first Friday of the month next following the filing of the motion before the List Judge.
29. Urgent applications, and applications by consent, may be made at any time by arrangement with the List Judge.
30. All applications for expedition should ordinarily be made to the List Judge by way of notice of motion to be returnable at a Directions Hearing, or by arrangement with the List Judge.

Expert witnesses

31. The Court is concerned about the number of experts often expected to give evidence in personal injury cases. The practice of having a large number of experts qualified, both medical and otherwise, whose opinions may be overlapping and whose reports either are not used or are of little assistance to the court is costly, time-consuming and productive of delay.
32. Where it is considered that an unnecessary expert has been qualified or is sought to be called to give evidence, the court may:
 - reject the tender of the expert's report;
 - refuse to allow the expert to be called; and
 - disallow any costs incurred in qualifying, in having the expert's report prepared or in calling the expert to give evidence.
33. The Court recognises that the liability aspects of medical negligence claims often involve complex issues as to breach and causation. This may require more than one expert from a

party to give evidence on a particular issue or issues. However, where there is more than one expert to give evidence on an issue, the evidence will be given concurrently unless directed by the Court. Particular directions in relation to those issues will be given at an appropriate point in the Directions Hearing.

34. In respect of the quantification of damages for death or personal injury, the following indications may be given:
- (a) As a guide, the number of expert witnesses giving evidence on behalf of a party shall be limited to:
 - (i) one medical expert in any speciality, unless there is a substantial issue as to ongoing disability, in which case the number shall be limited to two in any relevant speciality concerning that disability; and
 - (ii) two experts of any other kind.
 - (b) Actuarial reports will as a rule be considered unnecessary except in special circumstances where they are shown to be of assistance in the assessment of damages, for example in proceedings under the *Compensation to Relatives Act 1897* or where a claim is made for the costs of future fund management.
 - (c) All expert evidence will be given concurrently unless there is a single expert appointed or the Court grants leave for expert evidence to be given in an alternate manner.
 - (d) At the first Directions Hearing the parties are to produce a schedule of the issues in respect of which expert evidence may be adduced and identify whether those issues potentially should be dealt with by a single expert witness appointed by the parties or by expert witnesses retained by each party who will give evidence concurrently.
 - (e) In the case of concurrent experts, within 14 days of all expert witness statements/reports being filed and served, the parties are to agree on questions to be asked of the expert witnesses. If the parties cannot reach agreement within 14 days, they are to arrange for the proceedings to be re-listed before the court for directions as to the questions to be answered by the expert witnesses.
 - (f) In the case of concurrent experts, the experts in each area of expertise are to confer and produce a report on matters agreed and matters not agreed within 35 days of the first Directions Hearing or such other time as the Court may order.
 - (g) A single expert direction as to damages will be taken to have been made at the first Directions Hearing unless otherwise ordered.
 - (h) A single expert direction means that the following directions are to be taken as having been made, with such variations as may be specified at that time or subsequently:
 - Any expert evidence is confined to that of a single expert witness in relation to any one head of damages, including but not limited to the nature, extent and cost of required nursing care or domestic care (including claims under *Griffiths v Kerkemeyer*), physiotherapy, speech therapy, home modification, motor vehicle or aids and equipment, being evidence of the kind customarily given (by way of example) by rehabilitation consultants, occupational therapists, nursing and domestic care providers, architects, builders, motor vehicle consultants, and by aids and equipment suppliers.
 - Evidence may be provided by the same single expert in relation to more than one head of damages provided the expert is appropriately qualified. It is contemplated, however, that there may be a number of single expert witnesses retained or appointed in the one proceedings.

- In relation to any head of damages as to which any party wishes expert evidence to be adduced, the parties are to agree on a single expert to be retained and are to obtain the consent of the expert together with an estimate of the time required by the expert to complete the report within 14 days from a date specified in the order as the commencement date of the direction, otherwise within 14 days from the making of the direction.
- If the parties are unable to agree on a single expert or obtain the consent of the expert within the 14 day period referred to in the previous paragraph, the parties are to notify the court within a further 3 days and the court will pursuant to Part 31 of the UCPR appoint a court expert to be the single expert.
- Within 14 days from the selection or appointment of a single expert witness the parties are to brief the expert in such manner as the parties may agree with material sufficient to enable the expert to prepare a report. If the parties do not agree as to the manner of briefing the expert or as to the material to be provided to the expert or as to the questions to be put to the expert, the parties are to notify the court within 3 days for the purpose of having the matter re-listed for further directions as to briefing the single expert.
- If the parties agree or the single expert witness so requests, the plaintiff in the proceedings is to submit to clinical examination by the single expert witness.
- Within 21 days from the date on which a single expert witness is so briefed or within the time estimate provided by the single expert witness, the expert is to send his or her report to each of the parties to the proceedings, through their legal representatives.
- A single expert witness may be requested to provide a supplementary report taking into account any new or omitted factual material. The provisions of this part of the practice note apply to such a supplementary report mutatis mutandis.
- Any party may, within 14 days from receipt of the report, put a maximum of 10 written questions to the expert, but for the purpose only of clarifying matters in the report unless the court otherwise grants leave. The expert is to answer the questions within 14 days.
- The report of a single expert witness and any question put to the expert and the expert's answer thereto may be tendered by any party at the trial subject to all just exceptions.
- A single expert witness may be cross-examined at the trial by any party.
- A single expert witness's fee for preparation of the report and any supplementary report and for attending court, if required to do so, is to be paid by the parties equally, subject to other agreement or direction and subject to any later order concerning the costs of the proceedings. A single expert witness's fee for answering questions put by a party is to be paid by the party, subject to the same qualification.
- A single expert witness may apply to the Court for directions.

Listing for hearing of trial

35. Upon the service of lay witness statements the List Judge will determine if it is appropriate to list a matter for hearing and allocate to a judge for pre-trial case management.
36. When a hearing date is allocated it is to be anticipated that the List Judge will make such of the orders set out in Schedule 1 hereto as have not previously been made in the proceedings.

Registrar

37. The List Judge may arrange for the Registrar to carry out various functions in respect of the List.

T F Bathurst AC

Chief Justice of New South Wales

26 May 2020

Related information

Practice Note SC Gen 1 Supreme Court – Application of Practice Notes

Practice Note SC Gen 6 Supreme Court – Mediation

Practice Note SC Gen 10 Supreme Court – Single Expert Witnesses

Practice Note SC Gen 11 Supreme Court – Joint Conferences of Expert Witnesses

Supreme Court Rules 1970

Uniform Civil Procedures Rules 2005

Amendment History

26 May 2020: This Practice Note replaces former Practice Note SC CL 7 which was issued on 17 March 2008.

17 March 2008: This Practice Note which commenced on 31 March 2008 replaced the previous version of Practice Note SC CL 7 issued on 1 March 2006.

1 March 2006: This Practice Note replaced the previous version of Practice Note SC CL 7 issued on 17 August 2005.

17 August 2005: This Practice Note replaced the former Practice Note No. 104 on 17 August 2005.

SCHEDULE 1

FINAL ORDERS

It is contemplated that, unless made earlier in the proceedings, these orders will be made at the time a hearing date is allocated by the List Judge.

By this date it is expected that:

1. Pleadings are closed.
2. Expert reports on liability and damages have been served.
3. Instructing letters, statements of assumptions or documents provided to the expert have been served with the expert's report.
4. Any expert conference has taken place and any joint expert report has been filed.
5. A Part 15 Statement of Loss and Damage has been filed and served.
6. Interrogatories have been answered.
7. Any notices to admit facts or authenticity of documents have been served and responded to.
8. Any orders for trial of a separate issue have been obtained and any limited question for the trial judge has been agreed upon or ordered.

These draft orders contemplate the following practical realities:

1. The hearing date for the trial will be allocated by the Registrar at the last directions hearing.
2. The time between the allocation of the trial date and the trial date will be long (4 to 8 months).
3. Counsel may not be briefed until after the trial date is allocated.
4. A considerable amount of trial preparation takes place in the last two months before trial.
5. Supplementary experts' reports are often obtained after a trial date has been allocated.
6. Pleadings are often amended after the trial date has been allocated.

These draft orders are intended to:

1. Recognise the practical realities of trial preparation.
2. Focus the parties on the strengths and weaknesses of their case.
3. Permit a more informed appraisal of the case to facilitate earlier settlement discussions.
4. Provide an orderly division of labour between the parties in their trial preparation.
5. Assist the trial judge by having a uniform set of materials.

FINAL PNL ORDERS AND EXPLANATORY NOTES

1. Evidence Act Notices

Any notices under the *Evidence Act* that require "reasonable notice" should be given not less than 2 months before the trial.

2. Audio-Visual Link Applications

If any party intends to call evidence by Audio-Visual Link s/he should inform the other party. If the other party consents, the relevant form should be completed not less than 2 months before the trial. If the other party does not consent, an application should be made to the List Judge no less than 2 months before the trial.

3. Witness Statements

The evidence of the parties and all witnesses of fact (but not expert witnesses) should be by statement. The evidence of the plaintiff's witnesses should be served no less than two months

before the trial date. The evidence of the defendant's witnesses should be served no less than six weeks before the trial date.

4. Witness List

Each party should serve a list of proposed lay and expert witnesses to be called, the anticipated duration of their evidence and the order in which the witnesses are expected to give their evidence. This list should be served not less than 1 month before trial.

5. Supplementary Expert Reports

Any supplementary expert reports (ie, from experts whose reports have already been served) should be served not less than 1 month before the trial date. This accommodates issues of fact that may arise from the witness statements.

6. Expert Literature

Where an expert intends to rely on literature to support his/her opinion, the party calling that expert should, if so requested by another party, provide copies of any such literature (if available) or a list of any such literature (if it is not available) no later than 1 month before the trial date.

The literature should be limited to 5 relevant articles per expert. Literature does not replace expert opinion; it supports that opinion. The trial should not be used as a forum to examine the world literature on a topic; hence the recommendation to limit the number of articles which can be relied upon by one expert. Experts should be expected to be cross-examined on the literature relied upon.

7. Schedules of Loss and Damage

The plaintiff should provide a summary of the heads of damage. The defendant should respond to this document, noting agreement or disagreement on the heads of damage or the amount claimed. Where there is disagreement, the defendant should indicate the basis of the disagreement and state what amount, if any, it considers appropriate and why. Note that it is expected that the Part 15 statement will contain details of the plaintiff's claim. This Schedule is a summary only. The plaintiff's summary should be served no less than 2 months before the trial. The defendant's summary should be served no less than 1 month before the trial.

8. Plaintiff's Chronology

The plaintiff should prepare a chronology of material facts. There should be 3 columns:

- 1) DATE
- 2) DESCRIPTION
- 3) AGREED/DISPUTED

The third column should be left blank. The plaintiff's chronology should be served no less than 2 months before the trial.

9. Agreed Chronology

The defendant should complete the plaintiff's chronology noting in the 3rd column whether a fact is agreed to or is in dispute. The defendant may also include in the chronology additional material facts, to be indicated by underlining, and should serve the completed document no less than one month before trial. Where the defendant does include additional facts, the plaintiff should indicate in the third column whether such additional facts are agreed or disputed and should then re-serve the document no less than one week before trial.

10. Defendant's Statement of Facts and Issues in Dispute

The defendant should list the matters of fact and issues in dispute from the defendant's perspective. This should be served no less than 1 month before trial.

11. Plaintiff's List of Questions for the Trial Judge

The plaintiff should prepare a list of questions for the trial judge. This should include questions directed to any disputed issues of fact (derived from the defendant's chronology) and any other issues in dispute (derived from the defendant's statement of facts and issues in dispute).

The list of questions should include disputed issues of breach of duty, causation and damages.

The list of questions should be served no less than 2 weeks before trial.

The defendant may serve a response no less than one week before trial, including additional questions not expressed in the plaintiff's list and comment on the plaintiff's list of questions.

12. Glossary of Technical Terms

The defendant should prepare a glossary of technical terms to be served no less than 2 weeks before the hearing.

13. Amendments to Pleadings

Any amendments to the pleadings should be made not less than 2 weeks before the hearing. It is anticipated that with all witness statements and expert reports served any amendments would be to regularise the pleadings to accord with the evidence rather than to raise new allegations and defences.

14. Tender Bundles

The parties should agree on a list of documents to be included in their respective tender bundles. The objective is to not duplicate documents. All tender bundles should be paginated.

Agreed Tender Bundle

The Agreed Tender Bundle should include

- 1) the pleadings
- 2) Part 15 statement of damages particulars
- 3) plaintiff's schedule of loss and damage
- 4) defendant's schedule of loss and damage
- 5) agreed chronology
- 6) defendant's statement of facts and issues in dispute
- 7) plaintiff's questions for the trial judge
- 8) plaintiff's witness list
- 9) defendant's witness list
- 10) glossary of technical terms

The plaintiff should prepare one copy of the agreed tender bundle for the trial judge and one copy for each of the parties.

Individual Tender Bundles

Each of the parties should prepare their own bundle of documents which they intend to rely on at the trial. Each party should send the other an index for their individual tender bundle. The index should be served no less than 3 working days before the trial.

Each party should prepare a copy of their tender bundle for the trial judge.

The Individual Tender Bundle should include (but is not limited to) that party's

- 1) affidavits and statements by lay witnesses
- 2) expert reports
- 3) instructing letters

- 4) expert literature
- 5) selected primary documents

15. Liberty to Apply

There should be a general order for liberty to apply. But if a party is in default of an order for more than 14 days (for matters to be done more than 1 month before the trial) or for more than 7 days (for matters to be done less than one month before the trial) the matter should be brought before the List Judge or if a judge has been appointed, before that judge, for further directions.