



# Supreme Court of Victoria

## Practice Note SC CL 3

### Personal Injuries List

#### **1 INTRODUCTION**

- 1.1 The Chief Justice has authorised the issue of the following Practice Note.
- 1.2 The purpose of this Practice Note is to provide guidance on the procedures to be followed in the Personal Injuries List, a case management list within the Common Law Division of the Court.

#### **2 DEFINITIONS**

- 2.1 In this Practice Note:  
*List* means the Personal Injuries List.

#### **3 COMMENCEMENT**

- 3.1 This Practice Note commenced on 1 October 2018 and will apply to all proceedings in the List whenever commenced.

#### **4 PROCEEDINGS SUITABLE FOR INCLUSION IN THE LIST**

- 4.1 Proceedings that should be initiated in the List include claims in respect of:
  - industrial accidents;
  - motor vehicle accidents;
  - public and occupier's liability;
  - school injuries;
  - medical negligence;
  - sexual abuse;
  - personal accident or disability insurance policies;

- recovery of payments pursuant to section 104 of the *Transport Accident Act 1986* (Vic);
  - recovery of compensation pursuant to section 138 of the *Accident Compensation Act 1985* (Vic) or section 369 of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).
- 4.2 Dependency claims arising from proceedings of the nature set out in paragraph 4.1 should also be initiated in the List.
- 4.3 Where the Plaintiff alleges that he or she is suffering from a dust disease, the proceeding should be initiated in the Dust Diseases List (see Practice Note SC CL 2 Dust Diseases List).
- 4.4 Unless the balance of convenience and interests of justice dictate otherwise, where the cause of action arose in regional Victoria, or where the majority of witnesses or parties reside in regional Victoria, the proceeding should be initiated in the Civil Circuit List (see Practice Note SC CL 1 Civil Circuit List).

## **5 MOTOR VEHICLE ACCIDENTS**

- 5.1 Consistent with the Overarching Purpose and Obligations under the *Civil Procedure Act 2010* (Vic), it is the expectation of the Court that the parties in all claims for damages for injury or death resulting from a transport accident or arising out of the use of a motor vehicle to which sections 93, 94 or 96 of the *Transport Accident Act 1986* (Vic) or Part III of the *Wrongs Act 1958* (Vic) are applicable, will have endeavoured to facilitate resolution of the claim via the voluntary alternative dispute resolution processes set out in the applicable Transport Accident Act Common Law Protocols.

## **6 PROCEDURE FOR ENTRY INTO THE LIST**

- 6.1 Proceedings should be initiated in the List by endorsing the heading of the originating process "Personal Injuries List". The heading of all subsequent documents filed in the proceeding should also be endorsed "Personal Injuries List".
- 6.2 No additional fees will be payable for the inclusion of a proceeding in the List.
- 6.3 If at any time after the initiation of a proceeding it appears to the Court that it is appropriate to have the proceeding managed in the List, the Court may transfer the proceeding into the List.
- 6.4 Conversely, a proceeding initiated in the List may be transferred out of the List if it appears to the Court that it is appropriate to have the proceeding managed in a different list.
- 6.5 The Court may initiate a transfer of a proceeding in accordance with the *Courts (Case Transfer) Act 1991* (Vic) if it appears that it may be more appropriate for the proceeding to be heard and determined by another Court.

## 7 COURT APPEARANCES

- 7.1 Non-admitted persons may appear at directions hearings but must seek leave of the Court at least one day beforehand by emailing [personal.injuries@supcourt.vic.gov.au](mailto:personal.injuries@supcourt.vic.gov.au).
- 7.2 All persons appearing at directions hearings must be fully briefed on all relevant aspects of the matter so as to be in a position to assist the Court.
- 7.3 Parties are required to appear at directions hearings unless otherwise advised by the Court, including matters in which minutes of proposed consent orders have been submitted.

## 8 FIRST DIRECTIONS

- 8.1 The Court will generally notify the parties of the date and time of the first directions hearing within seven days of the filing of the first defence and will give directions for the management of the proceeding at that first directions hearing.
- 8.2 At or shortly after the first directions hearing, the proceeding will usually be given a trial date.
- 8.3 The parties are encouraged to seek agreement concerning proposed consent orders in advance of the first directions hearing, with a view to obtaining orders 'on the papers' and avoid the need for an appearance.
- 8.4 Requests for such orders are to be made using the *Request for Consent Orders First Directions* form, which can be found on the List webpage of the Court's website. This form contains standard first directions for matters in the List. While parties may dispense with unnecessary directions or add additional directions, they are requested not to alter the wording of standard clauses without good reason.
- 8.5 Parties should email completed *Request for Consent Orders First Directions* forms in both Word and signed PDF format to: [personal.injuries@supcourt.vic.gov.au](mailto:personal.injuries@supcourt.vic.gov.au) (cc. [orders@supcourt.vic.gov.au](mailto:orders@supcourt.vic.gov.au)) by **4.00pm two days prior to the hearing**. Requests received after that time may not be considered in time for the Court to excuse parties from attendance.

## 9 INTERLOCUTORY APPLICATIONS

- 9.1 Interlocutory applications should be made on summons and will generally be heard on Fridays during the Court sitting terms.
- 9.2 Where an application is expected to exceed two hours, it may be listed as a special fixture or, in the first instance, for directions.

- 9.3 In order to obtain a hearing date, a party intending to make an application should complete the “Interlocutory Application Information Form” available on the List webpage and forward it to [personal.injuries@supcourt.vic.gov.au](mailto:personal.injuries@supcourt.vic.gov.au).
- 9.4 The Court will advise the hearing date of the application via email. In order to maintain the hearing date the applicant should file the summons and supporting affidavit/s within 48 hours of receipt of the Court’s advice of hearing date email. This email should be filed with the summons and should also be served on all parties together with the application materials.
- 9.5 Any written outlines of submissions should be no more than five pages and should be filed no later than the day before the application is to be heard.
- 9.6 To facilitate the Court’s preparation, hearing and determination of applications, parties are requested to email:
- soft copies of filed documents relating to the application and submissions; and
  - a hyperlinked list of authorities upon which it is intended to rely to [personal.injuries@supcourt.vic.gov.au](mailto:personal.injuries@supcourt.vic.gov.au).

## **10 INTERROGATORIES**

- 10.1 The number of interrogatories served in proceedings in the List should be limited to 30 (including sub-parts).
- 10.2 In motor vehicle and industrial accident cases, unless the Court directs otherwise, interrogatories should be confined to questions of liability and contributory negligence.

## **11 POST-MEDIATION DIRECTIONS**

- 11.1 Interlocutory timetables will usually include an order that the parties attend a post-mediation directions hearing approximately 2-3 weeks after the date by which they have been ordered to attend mediation.
- 11.2 Attendance at the post-mediation directions hearing is compulsory and the parties must provide the Court with a provisional list of witnesses and advise:
- whether the Court ordered timetable has been complied with;
  - what issues remain in dispute;
  - whether it is proposed to seek leave to amend any pleading or join further parties; and
  - whether the initial estimate of the length of the trial requires adjustment.

## 12 FINAL DIRECTIONS

12.1 Proceedings will be listed for a final directions hearing at which an appearance is compulsory by a person adequately briefed to address questions from the Bench as to the readiness of the proceeding for trial.

12.2 At the final directions hearing, parties will be expected to:

- confirm that the proceeding is ready for trial;
- confirm the estimated number of sitting days;
- confirm whether the proceeding is to be heard by judge alone, or by judge and jury;
- confirm the name and contact details of the practitioner with conduct of the proceeding and advise whether counsel has been briefed for trial;
- confirm payment of the trial fee and jury fee (if the trial is to be heard before a jury);
- confirm that transcript has been arranged for the trial;
- provide a list of proposed expert and lay witnesses to be called at trial<sup>1</sup>;
- advise whether any witnesses will require an interpreter or will need to give evidence via video-link;
- advise whether a view is likely to be required during the trial;
- advise whether any witnesses have special needs;
- identify any outstanding interlocutory issues; and
- identify the main issues in dispute.

12.3 At the final directions hearing, the Court will usually order that the parties file, prior to trial, a joint memorandum signed by counsel and/or the solicitor who has the primary conduct of the matter, and deliver a key documents folder to the trial judge's associate. Both the joint memorandum and the key documents folder are to be prepared jointly by the parties.

### *Joint memorandum*

12.4 The purpose of the joint memorandum is to provide the trial judge with an overview of the case to be presented at trial by each party. It should not simply recite the pleadings, nor is it a substitute for proper pleadings. Rather, it should concisely set out:

- an overview of the claim and defences;
- any relevant procedural history, including settlements reached with other parties;

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<sup>1</sup> Note, witness lists must be electronically filed via RedCrest either before or immediately following the Final Directions Hearing

- the basic facts of the case, noting significant points of agreement and disagreement;
  - the major issues that remain in dispute; and
  - a short outline of the evidence each party intends to call. The outline should include the names of the witnesses, whether they are lay or expert and, in the case of experts, the witness's occupation/area of expertise.
- 12.5 As a guide, the joint memorandum should be no more than three to four A4 pages (with at least 1.5 line spacing); have numbered paragraphs; and contain subject matter headings.
- Key documents folder*
- 12.6 The key documents folder should contain a bare minimum of documents that are likely to be of assistance to the trial judge prior to the commencement of the trial. It should not resemble a traditional voluminous Court Book.
- 12.7 As a guide, the folder might include copies of:
- the current pleadings;
  - the joint memorandum;
  - relevant submissions;
  - significant orders or rulings that have a direct bearing on the trial; and
  - critical documents.
- 12.8 The key documents folder should not, as a matter of course, include overarching obligations certificates, affidavits of service, medical records, or tax documents.
- 12.9 The inclusion of a document in the key documents folder does not mean that the document must be tendered. Similarly, non-inclusion does not prevent a document from being tendered. If a document is to be tendered, this will need to be done in the usual way and subject to the rules of evidence.
- 12.10 The plaintiff should prepare the folder as agreed between the parties and deliver one copy to the trial judge's associate and one copy to all other parties within the time ordered. Unless the trial is to proceed as an eTrial, the folder should be in the following format:
- loose-leaf (lever arch folder);
  - double-side printed, (where practicable); and
  - paginated.
- 12.11 The trial judge may be content for parties to provide an empty folder at the commencement of the trial with relevant material to be handed up as necessary during the course of the trial. If parties prefer to adopt this approach, they should contact the trial judge's associate to ascertain the trial judge's preference.

### 13 APPLICATIONS FOR COSTS FROM A WORKER

- 13.1 Practitioners who require the leave of the Court to recover costs pursuant to s134AB(30) *Accident Compensation Act 1985* (Vic) or s344(7) *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) should ensure that they reserve liberty to make such an application at the time of any orders finalising the plaintiff's claim against the defendant/s.
- 13.2 Such applications should be made by filing the following material and sending an email to [personal.injuries@supcourt.vic.gov.au](mailto:personal.injuries@supcourt.vic.gov.au) advising of such filing:
- a covering letter;
  - an affidavit by the plaintiff's solicitor; and
  - an affidavit by the plaintiff.
- 13.3 The affidavit by the plaintiff's solicitor should:
- set out the amount of the judgment/settlement;
  - set out details of costs and disbursements assessed on an indemnity basis (formerly solicitor/client basis);
  - set out details of costs and disbursements assessed on a standard basis (formerly party/party basis);
  - set out the net amount sought to be recovered by the plaintiff's solicitors from the plaintiff;
  - state whether all costs disclosure obligations of Division 3 of Part 3.4 of the *Legal Profession Act 2004* (Vic) (**LPA**) or Division 3 of Part 4.3 of the *Legal Profession Uniform Law* found within Schedule 1 of the *Legal Profession Uniform Law Application Act 2014* (Vic) (**the Uniform Law**) (whichever is applicable), have been complied with;
  - state whether any part of the costs and disbursements are claimed pursuant to a costs agreement as referred to in Division 3 of Part 3.4 of the LPA or Division 3 of Part 4.3 of the Uniform Law (whichever is applicable);
  - exhibit a copy of all Costs Agreements and Costs Disclosures that the solicitor relies upon;
  - state whether an 'uplift fee' being additional legal costs payable under a costs agreement on the successful outcome of a proceeding is claimed;
  - set out any amount estimated or recovered as costs and disbursements from the defendant or pursuant to the *WorkCover (Pre-Litigated Claims) Legal Costs Order 2010*; *WorkCover (Litigated Claims) Legal Costs Order 2010*; *WorkCover (Pre-Litigated Claims) Legal Costs Order 2016* and/or *WorkCover (Litigated Claims) Legal Costs Order 2016*;

- include a brief summary of the work undertaken, for example the stage at which the proceeding was resolved or whether the matter proceeded to judgment;
- confirm that an account for costs and disbursements was provided to the plaintiff;
- confirm that the work described in the account given to the plaintiff was duly and properly undertaken;
- confirm that each disbursement was properly incurred;
- confirm that the solicitor has explained the plaintiff's rights to the plaintiff and that the plaintiff:
  - has indicated that they do not wish to challenge the affidavit;
  - has been advised of their right to obtain independent legal advice and has obtained such advice or does not wish to obtain such advice; and
  - consents to the making of the award.

13.4 The plaintiff's affidavit should:

- confirm receipt of the account for costs and disbursements; and
- confirm that the plaintiff:
  - has not requested an itemised bill;
  - does not wish to have the account for costs and disbursements reviewed pursuant to Division 7 of Part 4.3 of the Uniform Law;
  - understands their rights;
  - has been advised of the right to seek independent legal advice and has obtained such advice or does not wish to obtain such advice; and
  - consents to the making of the award in the sum referred to.

13.5 On receipt of the above, a judicial registrar will consider whether the material supports the making of the orders 'on the papers' and the plaintiff's solicitor will be advised accordingly.

## 14 COMPLIANCE WITH ORDERS & ADJOURNMENTS OF TRIAL

14.1 If at any time the parties are unable to comply with time limits in Court orders, they must notify [personal.injuries@supcourt.vic.gov.au](mailto:personal.injuries@supcourt.vic.gov.au) and request an extension of time.

14.2 Applications to adjourn trial dates should be made as soon as it is known that a matter is not ready to proceed as listed and should not be left until the Final Directions Hearing. Such applications should be made on summons supported by affidavit material in accordance with section 9 of this Practice Note.



## **15 TRANSCRIPT**

- 15.1 Practice Note SC Gen 7 is applicable to the requirements for transcript in relation to proceedings in the List.
- 15.2 For the purposes of Practice Note SC Gen 7, unless in a particular case parties are advised otherwise:
- 'Real-Time' transcript is not required for any proceeding in the List;
  - 'Running' transcript (as distinct from 'Real-Time' transcript and from 'Deferred' transcript) is required for all trials in the List; and
  - transcript is not required at all for directions hearings or interlocutory applications.

## **16 USE OF TECHNOLOGY**

- 16.1 The provisions of Practice Note SC Gen 5 Technology in Civil Litigation apply to proceedings in the List.
- 16.2 For the purposes of paragraph 9.11 of that Practice Note, documentary evidence in excess of 1500 pages is to be considered a large amount of documentary evidence.

## **17 COMMUNICATIONS WITH THE COURT**

- 17.1 Practitioners should consult Practice Note SC GEN 4 Custom and Protocol which sets out the general protocol for communications with the Court.
- 17.2 Email is the preferred form of communication in relation to proceedings in the List and the following protocols should be observed:
- Prior to a proceeding being allocated to the trial judge, emails are to be sent to [personal.injuries@supcourt.vic.gov.au](mailto:personal.injuries@supcourt.vic.gov.au). Once parties have been informed of the name of the trial judge, communications should be directed to the trial judge's associate/s. Contact details for all associates are on the Court website.
  - Emails should maintain the same level of formality expected of all communications with the Court.
  - Unless the communication concerns an application to be made without notice, all parties must be copied in.
  - Emails, like any other correspondence with the Court, are not the appropriate forum for raising contentious issues, unless the Court has invited written submissions via email.
- 17.3 Under the Rules of Court, lawyers are required to provide the name and email address of an individual to whom reference can be made in respect of the proceeding on all court documents. Lawyers are expected to monitor email

addresses provided and advise of any change of address in the same way as they would a mailing address.

## **18 FURTHER INFORMATION**

18.1 The Court's website includes a page dedicated to the List with up to date information about its operation including:

- a) judicial officers managing the List;
- b) this Practice Note in Word and PDF formats;
- c) Form for Request for Consent Orders First Directions;
- d) Interlocutory Application Information Form.

## **AMENDMENT HISTORY**

1 October 2018: This Practice Note was reissued on 1 October 2018 and amends the version issued on 22 March 2018.

22 March 2018: This Practice Note was reissued on 22 March 2018 with effect from 1 March 2018 and replaced former Practice Note SC CL 3 which was issued on 30 January 2017.

30 January 2017: This Practice Note was first issued on 30 January 2017 and replaced Practice Note No 9 of 2016 and *Notice to the Profession – Interlocutory Applications in the Personal Injuries and Dust Diseases Lists*.

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1 October 2018