



# Supreme Court of Victoria

## Practice Note SC CL 5

### Professional Liability 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 describe the procedures to be followed in the Professional Liability List. The List is a case management list within the Common Law Division of the Court.
- 1.3 The purpose of the List is to provide for the just and efficient determination of eligible proceedings, through early identification of the substantial questions in controversy and flexible adoption of appropriate procedures.

#### 2 DEFINITIONS

- 2.1 In this Practice Note:

*Associate Judge* means the Associate Judge assisting in the management of the List;

*Judge* means the Judge in Charge of the List;

*Judicial Registrar* means the Judicial Registrar assisting in the management of the List;

*List* means the Professional Liability List;

*List Coordinator* means the Court officer assigned to support the judicial officers managing the List;

*List directions day* means one of the regular days listed on the [List webpage](#) on the Court's website (generally held monthly on Thursdays during the Court sitting term);

*List webpage* means the [webpage](#) dedicated to the List available on the Court's website ([www.supremecourt.vic.gov.au](http://www.supremecourt.vic.gov.au));

*Rules* means the *Supreme Court (General Civil Procedure) Rules 2015*;

*Technology Practice Note* means Practice Note SC Gen 5 Technology in Civil Litigation.

### **3 COMMENCEMENT**

- 3.1 This Practice Note was issued and commenced on 1 October 2018 and applies to all proceedings in the List whenever commenced.

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

- 4.1 Proceedings involving a claim for economic loss against a professional for breach of duty in tort or contract, related statutory contravention (e.g. misleading or deceptive conduct), or for breach of equitable duties should be initiated in the List.
- 4.2 Without limiting the generality of paragraph 4.1, claims for breach of duty against the following professionals are suitable for inclusion in the List:
- a) legal practitioners;
  - b) financial advisers (including accountants, financial planners and finance brokers);
  - c) stockbrokers;
  - d) insurance brokers and agents;
  - e) real estate agents and conveyancers;
  - f) valuers;
  - g) taxation professionals.
- 4.3 Claims against the following professionals are excluded from the List:
- a) personal injury claims against health practitioners (managed in the Personal Injuries List); and
  - b) building, construction and engineering practitioners (managed in the Commercial Court).
- 4.4 Note, where the cause of action arose in regional Victoria, or where the majority of witnesses or parties reside in regional Victoria, proceedings of the nature set out in paragraphs 4.1 and 4.2 should be initiated in the Civil Circuit List (see Practice Note SC CL 1).

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

- 5.1 Proceedings of the nature set out in paragraphs 4.1 to 4.2 should be initiated in the List by endorsing the heading of the originating process "Professional Liability List". The heading of all subsequent documents filed in the proceeding should also be endorsed "Professional Liability List".
- 5.2 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 proceeding may be transferred into the List on the Court's own motion. This may occur where,

by virtue of an amended claim, counter-claim or third party claim, an eligible professional liability claim is introduced into the proceeding.

- 5.3 Conversely, a proceeding initiated in the List may be transferred out of the List on the Court's own motion if it appears to the Court that it is appropriate to have the proceeding managed in a different list.
- 5.4 No additional fees will be payable for the inclusion of a proceeding in the List.
- 5.5 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.
- 5.6 Case management will, in the first instance, be managed by the Judicial Registrar. The Judicial Registrar may refer the management of a proceeding, or a specific matter arising in the course of a proceeding, to the Associate Judge or the Judge.

## **6 FIRST DIRECTIONS HEARING**

- 6.1 Directions for the management of a proceeding in the List will be given at a first directions hearing on a List directions day. The Court will generally notify the parties of the date and time of the first directions hearing within 14 days of the filing of the first defence.
- 6.2 At the first directions hearing, the Court expects that each party's representative will be properly briefed and familiar with the proceeding, and will be able to deal fully with all issues that might arise. This expectation applies equally to self-represented litigants. If counsel have been retained to appear in the trial of the proceeding by the time of the first directions hearing, parties are strongly encouraged to brief such counsel to appear at the directions hearing.
- 6.3 At the first directions hearing, all parties are expected to have considered:
  - a) the nature of the claim, and the key legal and factual issues which may arise;
  - b) whether the parties have given each other sufficient information to understand the principal questions in issue;
  - c) their compliance with section 26 of the *Civil Procedure Act 2010*;
  - d) the likely duration and the mode of the trial;
  - e) the timing of mediation or other form of alternative dispute resolution;
  - f) joinder of any further parties;
  - g) whether apportionment is sought against any party or other person;
  - h) the filing and service of any further pleadings;
  - i) the provision of proper particulars;
  - j) whether interrogatories are required;

- k) the scope of discovery and, having regard to Parts C & D of the Technology Practice Note, the appropriate method of discovery and exchange/inspection of documents;
  - l) whether expert evidence is appropriate for the resolution of the issues in dispute and, if so, the nature and scope of any likely expert evidence and whether a common expert might be jointly retained (but, see paragraph 6.10 below);
  - m) whether questions in the proceeding should be referred to a special referee pursuant to Order 50 of the Rules or to a Court appointed expert pursuant to section 65M *Civil Procedure Act 2010*, and, if so, at what stage;
  - n) the timing for the filing and service of any evidence or affidavits; and
  - o) whether an order should be made for the separate trial of any question.
- 6.4 In considering the matters set out in paragraph 6.3, and any other directions required to progress the matter, parties should note that:
- a) leave is required for the filing and service of interrogatories, notwithstanding any consent minutes filed by the parties providing for them; and
  - b) generally, orders will not be made for witness statements and all witnesses will be required to give oral evidence at trial.
- 6.5 In most cases, proceedings will be listed for trial at the first directions hearing. Parties and practitioners should be in a position to provide an estimate of the length of the trial. Trial dates will be fixed approximately one year after the first directions hearing.
- 6.6 If the parties form the view that there is likely to be a substantial change in the estimated length of the trial, they should promptly notify the List Coordinator. A change in the estimate would not ordinarily lead to a trial date being vacated.
- 6.7 Consent orders will not usually be made on the papers prior to the first directions hearing.
- 6.8 Sample standard orders which will be made at the first directions hearing can be accessed via the List webpage on the Court's website.
- 6.9 In some proceedings within the List, a case management conference may be convened prior to the first directions hearing, or in substitution for the first directions hearing, to enable more detailed consideration of the matters referred to in paragraph 6.3.
- 6.10 Parties are reminded that, pursuant to section 65G of the *Civil Procedure Act 2010*, directions must be sought from the Court as soon as practicable by a party intending to adduce expert evidence at trial, or becomes aware that they may adduce expert evidence at trial.

## **7 MANAGEMENT OF PROCEEDINGS FOLLOWING THE FIRST DIRECTIONS HEARING**

7.1 The Court expects all parties to cooperate with one another to achieve the just and efficient resolution of the proceeding in accordance with the *Civil Procedure Act 2010*.

7.2 The following matters will not be dealt with at a directions hearing and should be determined at a separate hearing (unless the Judicial Registrar considers otherwise):

- a) discovery disputes;
- b) disputes concerning the giving or adequacy of pleadings and particulars;
- c) applications for security for costs;
- d) the joinder of any parties;
- e) applications to strike out proceedings or for summary judgment; and
- f) disputes concerning subpoenas;

unless the dispute is minor in nature, and can be heard and determined expeditiously in the discretion of the judicial officer.

7.3 Parties seeking to make an interlocutory application should complete the "Interlocutory Application Information Form" available on the List webpage and forward it to the List Coordinator in the first instance. Parties will be advised of the time and date that the summons should be made returnable and the judicial officer who will hear the application. Parties seeking an urgent hearing of an interlocutory application should contact the List Coordinator in the first instance.

### *Joinder applications*

7.4 Applications for joinder should be made at the earliest opportunity. The Court will take into account any unnecessary delay on the part of a party in making any application for joinder when exercising its discretion as to whether to allow the application, and in determining the question of costs.

7.5 Applications should be brought by summons, supported by an affidavit setting out the basis for the joinder and including a proposed statement of claim against the party to be joined.

7.6 The summons and supporting affidavit must be filed and served on all existing parties and the party sought to be joined within sufficient time to enable them to determine whether to appear on the hearing of the application, and to seek or to be subject to directions if joined.

## **8 POST-MEDIATION DIRECTIONS HEARING**

8.1 Interlocutory timetables will usually include an order that the parties attend a mediation. The proceeding will be listed for a post-mediation directions

hearing within 30 days of the date by which the mediation is to have been concluded, to consider, among other things:

- a) directions for the preparation of the proceeding for trial;
- b) whether the issues in dispute should be reduced to a statement of issues to assist the process of clarifying the real questions for resolution;
- c) directions with respect to the preparation of any further expert reports and the manner in which evidence will be given by experts including directions under rule 44.06 of the Rules;
- d) that certain questions be heard and determined in a preliminary way;
- e) that the evidence and submissions of the parties upon a particular question be heard in a preliminary way;
- f) that the evidence of all parties upon a particular question be given before the evidence upon other questions;
- g) an updated estimate of the likely duration of the trial;
- h) fixing a time after which no further party may be joined; and
- i) directions for the conduct of the trial including, having regard to Part D of the Technology Practice Note, the means of conducting the trial.

8.2 Sample standard orders which might be made at a post-mediation directions hearing can be accessed via the List webpage on the Court's website.

## **9 FINAL DIRECTIONS HEARING**

9.1 A final directions hearing will be held shortly before the date fixed for trial.

9.2 At a final directions hearing, each party's representative should be in a position to deal with the following matters:

- a) whether the trial is ready to proceed on the proposed commencement date;
- b) an updated estimate of the likely duration of the trial and a timetable for the conduct of the trial;
- c) if applicable, readiness of e-trial arrangements;
- d) whether any applicable timetable is still appropriate;
- e) whether a further mediation would be likely to achieve a settlement of some or all of the questions in issue; and
- f) whether any interlocutory steps remain outstanding.

## **10 TRANSCRIPT**

10.1 Practice Note SC Gen 7 is applicable to the requirements for transcript in relation to proceedings in the List.

- 10.2 Unless parties are advised otherwise:
- a) the parties are required to obtain a running transcript for trials, interlocutory applications, case management conferences and directions hearings;
  - b) by leave of the judicial officer, a deferred transcript may be provided for directions hearings.

## **11 COURT ORDERS**

- 11.1 If at any time the parties are unable to comply with time limits in Court orders, they must notify the List Coordinator and request an extension of time.
- 11.2 The Plaintiff's solicitors are encouraged to deliver proposed consent orders to all other parties in advance of all directions hearings. Parties seeking consent orders should email minutes of consent to the List Coordinator, in both Word and signed PDF format, by 1.00pm on the business day prior to the directions hearing.
- 11.3 Liberty to apply is implied in all interlocutory orders.
- 11.4 The Court will authenticate orders on the papers where appropriate. However, notwithstanding that the parties may have submitted proposed consent orders, the Court may require the attendance of practitioners at a hearing.
- 11.5 Parties are required to appear at all scheduled directions hearings unless otherwise advised by the List Coordinator.

## **12 USE OF TECHNOLOGY**

- 12.1 The provisions of the Technology Practice Note apply to proceedings in the List.
- 12.2 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.

## **13 COMMUNICATIONS WITH THE COURT**

- 13.1 Practitioners should consult Practice Note SC GEN 4 Custom and Protocol which sets out the general protocol for communications with the Court.
- 13.2 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 the List Coordinator. 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.

13.3 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.

## 14 FURTHER INFORMATION

14.1 The [List webpage](#) of the [Court's website](#) includes up to date information about the operation of the List including:

- a) judicial officers managing the List;
- b) contact details of the List Coordinator;
- c) links to this Practice Note in Word and PDF formats;
- d) standard forms of wording for interlocutory orders;
- e) the Interlocutory Application Information Form;
- f) a calendar of List directions dates.

## AMENDMENT HISTORY

1 October 2018: This Practice Note was reissued on 1 October 2018 and amends the version originally issued on 30 January 2017.

30 January 2017: This Practice Note was issued on 30 January 2017 and replaced Practice Note No 5 of 2015 and *Notice to the Profession - Professional Liability Claims Against Taxation Professionals* issued on 29 June 2016.

Vivienne Macgillivray  
Executive Associate to the Chief Justice  
1 October 2018