

MOTOR VEHICLE ACCIDENT DAMAGES PROCEEDINGS

FAST TRACK PILOT CONSULTATION

6 September 2018 |



Supreme Court of Victoria
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Melbourne Victoria 3000

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Introduction

The Supreme Court conducted a Workshop on 16 April 2018 to identify and explore initiatives that the Common Law Division might take to improve the management of proceedings for damages in respect of death or personal injury related to a motor vehicle accident.

The Workshop was attended by representatives of the Transport Accident Commission, the Law Institute of Victoria, plaintiff and defendant firms, judicial officers of the Supreme and County Courts and court staff.

In response to the matters discussed at the Workshop, the Court proposes to conduct a pilot 'Fast Track' case management procedure for certain types of motor vehicle damages proceedings and seeks feedback from stakeholders on the following draft *Notice to the Profession - Motor Vehicle Accident Damages Proceedings Fast Track Pilot*.

Feedback should be provided via email **by 30 September 2018** to personal.injuries@supcourt.vic.gov.au using the subject line 'MVA Fast Track Pilot Consultation'.

Draft Notice to the Profession - Motor Vehicle Accident Damages Proceedings Fast Track Pilot

1. Introduction

- 1.1. The Court acknowledges that parties to claims for damages in respect of death or personal injury related to a motor vehicle accident (**MVA Proceedings**) may have engaged in pre-litigation alternative dispute resolution processes pursuant to the Transport Accident Act Common Law Protocols (**Protocols**).
- 1.2. In recognition of the work that is undertaken and material exchanged by the parties as a result of participation in the Protocols, the Supreme Court is introducing a pilot 'fast-track' case management procedure (**Pilot**) for single defendant, quantum only MVA Proceedings where the parties have participated in the Protocols. The Pilot is aimed at expediting the hearing and determination of such cases. From 1 January 2019, unless the Court otherwise directs, these cases will follow the procedure outlined below.
- 1.3. The Pilot will be reviewed after an initial trial period of 12 months.

2. Fast Track Pilot – Criteria

2.1. A MVA Proceeding will be eligible for entry into the Pilot if it meets all of the following criteria:

- managed in the Personal Injuries List or, where appropriate, the Civil Circuit List;
- claim is for injury and/or death against a single Transport Accident Commission indemnified defendant;
- the parties participated in the Protocols prior to commencement of the proceeding;
- liability, including contributory negligence, is not in issue; and
- the only matter for the Court's determination is the quantum of damages.¹

2.2. Despite meeting the above criteria, the Court may refuse to enter a proceeding into the Pilot if it considers it unsuitable for management within the Pilot's procedures.

3. Fast Track Pilot - Procedure

Notification to the Court

3.1. The plaintiff's solicitor, upon being served with the defendant's appearance in a MVA Proceeding which they consider to be eligible for the Pilot, shall inform the Court, via email to personal.injuries@supcourt.vic.gov.au or civil.circuits@supcourt.vic.gov.au (copied to the defendant's solicitor), that the parties participated in the Protocols prior to the proceeding being issued and request entry into the 'MVA Fast Track Pilot'.

3.2. Upon receipt of the above email, the Court will list the proceeding for a First Directions Hearing.

3.3. No later than two days before the First Directions Hearing, the parties are to file a joint memorandum which:

- confirms that the plaintiff's claim proceeded through the Protocols;
- includes a list of documents used/relied upon in the Protocols which the parties intend to rely upon in the proceeding;
- confirms that the defendant admits breach of a duty of care to the plaintiff and that contributory negligence or other defences relating to liability are not in issue;
- confirms that the only issues for determination by the Court are the damage sustained by the plaintiff as a result of the breach of duty (if applicable) and/or the quantum of damages; and
- provides particulars of the scope of the dispute.

¹ Cases involving causation disputes arising out of the nature and/or extent of the plaintiff's injuries may be considered for entry.

First Directions Hearing

- 3.4. Attendance at the First Directions Hearing is mandatory. The Court will consider making orders on the papers only in special circumstances.
- 3.5. At the First Directions Hearing, the Court will fix an expedited timetable. The orders that the Court will make will usually be limited to:
- the filing of a defence (if necessary);
 - discovery (of a very limited nature, if at all);
 - exchange of expert reports pertaining to damage/damages. Note:
 - it will be expected that parties should, where possible, rely on expert material exchanged during the Protocols provided that such material is in a form which can be admitted into evidence; and
 - the Court may make orders in relation to expert evidence pursuant to its powers under Part 4.6 of the Civil Procedure Act 2010 (Vic);
 - referral to court-arranged mediation;
 - fixing a trial date within 3-6 months and a Final Directions Hearing.

Interlocutory disputes

- 3.6. Parties are encouraged to bring any unresolved interlocutory disputes before the Court at an early stage.
- 3.7. The usual procedures for making interlocutory applications in the Personal Injuries and Civil Circuit Lists (set out in Practice Notes SC CL 3 and SC CL 1 respectively) apply to cases in the Pilot.

Re-fixing trial dates

- 3.8. Should a party, despite their best endeavours, not be ready for the trial date fixed by the expedited timetable, they should request a date for the making of an application to vacate the trial by emailing a completed "Interlocutory Application Information Form" (available on the relevant List webpage of the Court's website) to the relevant List inbox.
- 3.9. Such applications will need to be made on notice to the other party and supported by affidavit material however a summons will not be required.
- 3.10. While the proceeding will exit the Pilot upon vacation of the trial date, the Court will aim to minimise any prejudice which may otherwise be occasioned by participation in the Pilot when allocating a new trial date.

4. Further information

- 4.1. The Court will seek feedback from parties participating in the Pilot at the conclusion of a proceeding.
- 4.2. If parties have any queries concerning the Pilot generally or wish to provide feedback during the course of a Pilot proceeding, they are encouraged to contact the Court via email to personal.injuries@supcourt.vic.gov.au and include 'MVA Fast Track Pilot' in the subject line of the email.