



## Notice to the Profession

### Fast Track Pilot Motor Vehicle Accident Damages Proceedings

#### 1. Introduction

- 1.1. The Chief Justice has authorised the issue of the following Notice to the Profession.
- 1.2. 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**).
- 1.3. 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.
- 1.4. 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.<sup>1</sup>

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 legal representative in a MVA Proceeding which they consider to be eligible for the Pilot, shall request entry into the 'MVA Fast Track Pilot' via email to [personal.injuries@supcourt.vic.gov.au](mailto:personal.injuries@supcourt.vic.gov.au) or [civil.circuits@supcourt.vic.gov.au](mailto:civil.circuits@supcourt.vic.gov.au) depending on the specialist list within which the proceeding is managed.
- 3.2. The email must be copied to the legal representative of the defendant, or, in the event that service has not yet been effected on the defendant, to the TAC, and must attach a copy of the certificate referred to in clause 16.6 of the Protocols.
- 3.3. If service has not yet been effected on the defendant, the plaintiff's legal representative must also ensure that the TAC has been provided with copies of all court documents filed in the proceeding.
- 3.4. Upon receipt of the above email, the Court will list the proceeding for a Case Management Conference.
- 3.5. No later than two days before the Case Management Conference, the parties<sup>2</sup> are to file a joint memorandum which:
  - includes a list of documents used/relied upon in the Protocols which the parties intend to rely upon in the proceeding;
  - outlines any additional evidence that the parties propose to obtain prior to trial;

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

<sup>2</sup> If service has not yet been effected on the defendant, the joint memorandum is to be completed by the plaintiff's legal representative and the TAC.

- 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 at trial are the damage sustained by the plaintiff as a result of the breach of duty (if applicable) and/or the quantum of damages;
- provides particulars of the scope of the dispute; and
- outlines any proposed or anticipated interlocutory applications, including for substituted service.

#### *Case Management Conference*

3.6. Attendance at the Case Management Conference is mandatory. The Court will consider making orders on the papers only in special circumstances.

3.7. At the Case Management Conference, 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 limited nature, if at all);
- setting time limits for the making of any proposed interlocutory applications;
- 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*

3.8. Parties are encouraged to bring any unresolved interlocutory disputes before the Court at an early stage.

3.9. 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*

3.10. 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.

3.11. 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.

3.12. 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](mailto:personal.injuries@supcourt.vic.gov.au) and include ‘MVA Fast Track Pilot’ in the subject line of the email.

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