



# Supreme Court of Victoria

## Major Torts List

### Common orders templates

#### First directions hearing [paragraph 6 of Practice Note SC CL 4]

##### **Pleadings & particulars**

1. By 4.00pm on [date], the plaintiff file and serve any reply.
2. By 4.00pm on [date], each party file and serve any request for further and better particulars of the other party's pleadings.
3. By 4.00pm on [date], the defendant file and serve any third party notices.
4. By 4.00pm on [date], the defendant file and serve any notice of contribution.

##### **Discovery & evidence**

1. By 4.00pm on [date], each party make discovery of all the following documents:
  - a) documents referred to in the party's pleadings or the particulars of the pleadings;
  - b) documents on which the party relies;
  - c) documents that adversely affect the party's own case;
  - d) documents that adversely affect another party's case;
  - e) documents that support another party's case; and
  - f) documents which the person considers, or ought reasonably consider, are critical to the resolution of the dispute.
2. By 4.00pm on [date], the parties complete inspection of documents.

3. By 4.00pm on [date], the parties file and serve any interrogatories in accordance with paragraph 6.4 of *Practice Note SC CL 4 'Major Torts List'*.
4. By 4.00pm on [date], any party interrogated file and serve answers to interrogatories.
5. By 4.00pm on [date], the plaintiff deliver a list particularising any special damages, loss of earnings and loss of earning capacity claimed by the plaintiff.

Alternatively to [5]:

6. By 4.00pm on [date], the plaintiff file and serve particulars of loss and damage.
7. By 4.00pm on [date], the parties issue any subpoena under Order 42A of the *Supreme Court (General Civil Procedure) Rules 2015*.

### **Providing timetable for the amendment of pleadings**

1. By 4.00pm on [date], the plaintiff provide a proposed amended statement of claim to the defendant, together with an explanation of the basis for seeking the exercise of the court's discretion to grant leave to amend.
2. By 4.00pm on [date], the defendant advise the plaintiff if it consents or objects to the filing and service of the proposed amended statement of claim. In the event that it declines to consent, it shall serve an outline of its submission in opposition to leave being granted.
3. If no objections has been made to the plaintiff's proposed amended statement of claim by [date], the plaintiff has leave to file and serve the amended statement of claim in the form circulated by [date].
4. If the consent of the defendant is not obtained in accordance with paragraph 2 above, the plaintiff may bring an application for leave to amend the statement of claim by [date], to be made returnable before the Honourable [judicial officer] on [date].

### **Confidentiality**

*Example 1 (two classes of confidential material)*

1. The documents listed in Schedule A to this order be:
  - a) confidential and:

- i. in respect of the documents listed in Section 1 of Schedule A to this order, not be disclosed to any person or party; and
  - ii. in respect of the documents listed in Section 2 of Schedule A to this order, not be disclosed to any person other than a party to the proceeding;
- b) [where a paper file] sealed in an envelope marked “Not to be opened without leave of the court or a judge” and placed on the court file; and
  - c) held on the court file in accordance with (a) [and (b)] hereof until further order of the court.

*Example 2 (confidential affidavit and exhibits)*

1. [where a paper file] The affidavit of [name] dated [date], and all exhibits thereto, be confidential and sealed in an envelope marked “Not to be opened without leave of the court or a judge”, and held on the court file on that basis until further order of the court.
2. [where an electronic file] The affidavit of [name] dated [date], and all exhibits thereto, be filed as confidential and held on the court file on that basis until further order of the court.

**Interlocutory application**

1. By 4.00pm on [date], the defendant file and serve any application that [describe application], together with any supporting affidavit and an outline of submissions, to be made returnable before [judicial officer nominated by the court] at [time] on [date].<sup>1</sup>
2. By 4.00pm on [date], the plaintiff file and serve any affidavit in opposition to the application and an outline of submissions.

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<sup>1</sup> The details for the return of the application may be obtained by sending an Interlocutory Application Information Form to the list coordinator.

## **Mediation**

1. The proceeding is referred to mediation to be completed by [date]. The mediator is to be agreed between the parties or, in default of agreement, to be appointed by the court.
2. The solicitors for the plaintiff, after consultation with all parties, must deliver to the mediator a copy of this order, all pleadings (including further particulars) and any other relevant information as agreed, and take all steps necessary to ensure that the mediation commences as soon as practicable.
3. Those persons who have the ultimate responsibility for deciding whether to settle the dispute and the terms of any settlement, and the legal representatives who have ultimate responsibility to advise the parties in relation to the dispute and its settlement, are to attend the mediation.
4. Subject to any further order, the costs of the mediation are to be paid in the first instance by the parties in equal shares.
5. Within seven days of the date for completion of the mediation, the mediator must report to the court about the completion of the mediation.
6. The parties must promptly notify the court if the proceeding is resolved.

## **Trial date**

1. The proceeding is fixed for trial by [jury]/[judge alone] on [date] on an estimate of [XX] sitting days.
2. In order to secure the trial date, the setting down and hearing fees are to be paid in accordance with the *Supreme Court (Fees) Regulations 2018*.
3. Any application to adjourn or vacate the trial date must be made as soon as it is known that the trial is not ready to proceed on the date fixed.
4. Any party must promptly notify the court on becoming aware of any circumstance that significantly affects the length of the trial estimate.

## **Expert evidence preliminary directions**

### *Example A*

1. By 4.00pm on [date], the parties file and serve the reports of the experts from whom they intend to adduce evidence at trial in accordance with Order 44 of the *Supreme Court (General Civil Procedure) Rules 2015*.
2. Unless provided within or accompanying an expert report when served, within seven days of service of an expert report the party intending to rely on that report shall file and serve a list of the documents which that expert witness will prove or refer to and a copy of all underlying calculations and data that underpin the opinions expressed by the expert.
3. If either party intends to object to the admissibility at trial of any part of an expert report served under paragraph 1, subject to the parties having conferred and used reasonable endeavours to co-operatively resolve any matter of objection, by no later than [date] that party shall file and serve on other parties its application and any supporting affidavit or other material.

### *Example B*

1. On or before [date], the plaintiff serve on the defendant:
  - a) a list identifying the name, professional address and area of expertise;
  - b) a statement of the qualifications and experience;
  - c) a statement of the source material with which that expert is to be briefed;
  - d) a statement of all assumptions which that expert is being asked to make;
  - e) a list of the questions which that expert is being asked to answer; andof each expert that he proposes to call at the trial.
2. On or before [date], the defendant:
  - a) in respect of material served in compliance with the preceding order, inform the plaintiff of any objection to:
    - i. the retainer by that other party of any nominated expert;

- ii. the relevance, nature or extent of any question or issue being submitted to an expert upon which the expert is to respond;
- iii. the relevance, nature or extent of the material being submitted to the expert or of any material which ought to be submitted to that expert upon which the expert is to respond;
- iv. the expertise of the expert to address the questions or issues submitted.

b) serve on the plaintiff:

- i. a list identifying the name, professional address and area of expertise;
- ii. a statement of the qualifications and experience;
- iii. a statement of the source material with which that expert is to be briefed;
- iv. a statement of all assumptions which that expert is being asked to make;
- v. a list of the questions which that expert is being asked to answer; and

of each expert that it proposes to call at the trial.

3. By [date], the plaintiff, in respect of material served in compliance with the preceding order, inform the plaintiff of any objection to:

- a) the retainer by that other party of any nominated expert;
- b) the relevance, nature or extent of any question or issue being submitted to an expert upon which the expert is to respond;
- c) the relevance, nature or extent of the material being submitted to the expert or of any material which ought to be submitted to that expert upon which the expert is to respond;
- d) the expertise of the expert to address the questions or issues submitted.

4. By [date], the solicitors for the parties confer and use reasonable endeavours to co-operatively resolve any matter of objection notified under the preceding orders. In the event that objections:
  - a) are resolved, the parties shall instruct their respective experts accordingly;  
or
  - b) are not resolved, the parties maintaining objections, on or before [date], shall file and serve an application for the resolution of such objections.
5. By [date], the parties serve the expert reports on which they will rely at trial.
6. Unless provided within, or accompanying, an expert report when served, within seven days of service of an expert report, the party intending to rely on that report shall file and serve a list of the documents which that expert witness will prove or refer to and a copy of all underlying calculations and data that underpin the opinions expressed by the expert.
7. If either party intends to object to the admissibility at trial of any part of an expert report served under paragraph 5 above, subject the parties having conferred and used reasonable endeavours to co-operatively resolve any matter of objection, by no later than [date] that party shall file and serve on other parties its application and any supporting affidavit or other material.
8. Without the leave of the trial judge first had and obtained, no party may maintain at trial an objection to the admissibility of a report, or any part thereof, of an expert who has signed a joint report following a conclave of experts held by direction of the court.

### **Extending time for compliance with prior orders**

#### *Example 1*

1. The date set out in paragraph [X] of the orders made by the Honourable [judicial officer] on [date] ('the [date] orders'), providing for the defendant to

file and serve its defence to the plaintiff's statement of claim, is extended to 4.00pm on [date] (previously [date]).

2. The date in paragraph [X] of the [date] orders, requiring the plaintiff to file and serve its reply to the defendant's defence, is extended to 4.00pm on [date] (previously [date]).

#### *Example 2*

1. The time provided in paragraph [X] of the orders made by the Honourable [judicial officer] on [date] is extended so that by 4.00pm on [date], the plaintiff notify the court of the result of mediation.

#### **Vacating prior orders**

1. Paragraphs [X] to [X] of the orders made by the Honourable [judicial officer] on [date] are vacated.

#### **Listing or vacating directions hearing**

1. The proceeding is listed for further directions at 9:30am on [date].<sup>2</sup>
2. The directions hearing listed for [date] is vacated.

#### **Costs**

1. Costs are reserved. / The costs of the parties are costs in the proceeding.

#### **On settlement**

1. The proceeding is dismissed without adjudication on the merits.

Alternatively:

1. The proceeding is dismissed without adjudication on the merits and there is no order as to costs.

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<sup>2</sup> A proceeding in the list must be adjourned to a further directions hearing on a list directions day, until the final directions hearing confirming readiness for trial.



## **Post-mediation directions hearing [paragraph 8 of Practice Note SC CL 4]**

### **Trial preparation**

1. By 4.00pm on [date], the parties prepare and file a draft statement of issues that identifies and summarises the key issues in dispute in the proceeding.
2. By 4.00pm on [date], the parties file and serve written outlines of opening submissions, limited to [XX] A4 pages, 1.5-spaced text in a common font style, size 12.
3. By 4.00pm on [date], the parties file an agreed chronology.

### **Lists of witnesses**

1. By 4.00pm on [date], the parties each file and serve a list of the witnesses they intend to call during the trial of this proceeding.
2. By 4.00pm on [date], the parties exchange an estimate of the time expected for evidence-in-chief of each witness.
3. By 4.00pm on [date], the parties exchange an estimate of the time expected for each witness to be cross-examined.
4. By 4.00pm on [date], the plaintiff file and serve a trial program that identifies the full list of witnesses to be called at trial (subject to objections) with the consolidated estimate of time for the evidence of each witness.

### **Witness outlines**

1. Subject to any order of the court, evidence in the trial be given orally with the parties providing a witness outline for each lay witness they intend to call.
2. By 4.00 pm on [date], the plaintiff file and serve its witness outlines.
3. By 4.00 pm on [date], the defendant file and serve its witness outlines.
4. Each party will have available for use by the judge a copy of all its witness outlines in paper form and in electronic form.
5. Each witness outline must:
  - a) be set out in numbered paragraphs;

- b) be a brief outline of the evidence the witness will give;
  - c) clearly identify the topics in respect of which evidence will be given and the substance of that evidence, including the substance of each important conversation; and
  - d) include a list of all of the documents (identified by page number from the court book) that the witness will prove or refer to.
6. The content of a witness outline served pursuant to an order of the court is subject to the same implied undertaking as to confidentiality as applies to a document produced upon discovery.
  7. No person may use any part of the contents of a witness outline for the purposes of cross-examination of the person providing the witness outline or any other person without leave of the court.

### **Court book**

#### *Example 1 (paper court book)*

1. The plaintiff prepare a court book containing the following documents:
  - a) the current pleadings, including requests for particulars;
  - b) all documents, in date order, which any party expects to tender in evidence-in-chief or to be referred to in cross-examination.
2. By [date], the plaintiff serve on the defendant a draft index for the proposed court book. The defendant must send a list of documents to be included or excluded from the proposed court book and both parties must consult and agree upon the contents of the court book by [date].
3. By [date], the plaintiff serve on the defendant and file for the judge a copy of the court book. The plaintiff must also provide the judge with the index to the court book in electronic form.
4. The plaintiff is to have available at the hearing a further copy of the court book for the exclusive use of witnesses during their examination.

#### *Example 2 (electronic court book)*

1. The trial of the proceeding be by a technology assisted e-trial in accordance with Practice Note SC GEN 5 'Technology in Civil Litigation'.
2. The plaintiff prepare an electronic court book for the trial formatted in accordance with paragraph 3 containing the following documents:
  - a) the index prepared in accordance with paragraph 4;
  - b) the current pleadings including particulars;
  - c) all documents, in date order, which any party expects to tender in opening, in evidence-in-chief, or through cross-examination.
3. The court book is to be in the format of a USB stick containing an individual electronic document for each record indexed in the court book. For each document:
  - a) the file name is to be the ID/bar code applied to each document in the court book;
  - b) the document is to be in text-searchable PDF format (made searchable using optical character recognition) either converted from native format or created from a scanned hard copy; and
  - c) each individual page is to be consecutively numbered.
4. By 4.00pm on [date], the plaintiff prepare and provide the defendant with an initial draft index for the court book. The index to the court book is to be in a format specified by the Supreme Court ELitigation Coordinator and a template can be obtained by request to the Coordinator.
5. By 4.00pm on [date], the defendant provide the plaintiff with proposed additions to the draft index.
6. By 4.00pm on [date], the defendant provide documents to the plaintiff as necessary for addition to the court book in text-searchable PDF format.
7. By 4.00pm on [date], the plaintiff provide copies of the court book and final index to the defendant and to the court.
8. Each party will be responsible for bringing the hardware they require to access their copy of the court book. The court will provide the hardware necessary for the trial judge and witnesses to view the court book.

## **Jury**

1. By 4.00pm on [date], the plaintiff submit to the defendant a draft list of questions for the jury.
2. By 4.00pm on [date], the defendant notify the plaintiff of any additions or proposed amendments required to the list of questions for the jury.
3. By 4.00pm on [date], the plaintiff file an agreed list of questions for the jury.
4. The plaintiff have available, prior to opening their case, copies of the jury book, paginated and containing uncontroversial documents to be agreed between the parties in advance of the trial, for the use of the jury members and the court.

## **Expert evidence**

### *Example 1*

1. In respect of experts of like specialisation, in addition to the matters addressed by the experts in their respective reports filed in the proceeding and to the extent of any disagreement between the experts, by 4.00pm on [date] the parties will agree on and provide to the experts a list of questions for their joint opinion ('Questions').
2. By 4.00pm on [date], the parties will agree as to the documents and information to be provided to the experts for the purpose of completing their joint report referred to in paragraph 1 and will provide that material to the experts. The parties will also provide, as agreed, any other information requested by the experts to complete their joint report including a copy of this order.
3. By 4.00pm on [date], the experts are to confer and provide to the court and to the parties a joint report containing their joint opinion as to the Questions. The joint report must state:
  - a) the Questions on which the experts were directed to confer;
  - b) that they have met and discussed each of the Questions; and
  - c) the Questions on which they agree.

4. If the experts are unable to express a joint opinion on any Question, the joint report must describe the difference(s) between the opinions and set out their respective reasons for disagreeing.
5. Each expert must sign the report, and the report must be provided to the court and the parties on or before [date].
6. The experts, and not the parties or their legal representatives, are to determine the venue and procedure to be adopted at the conference. In the event that agreement cannot be reached about any matter relevant to the conference or joint report to the court, further directions may be sought from the court.
7. The experts' conference is intended to be a consultation of experts without any influence from a party to the proceeding. To that end, and subject to paragraph 8:
  - a) the conference of experts and all further communications between them in relation to the preparation of the joint report must be conducted in the absence of their parties, their employees or agents, or any practitioner for or associated with any party;
  - b) none of the experts may in the preparation of the joint report consult with any party, their employees or agents, or any practitioner for or associated with any party; and
  - c) notwithstanding (a) and (b), the experts may jointly request further information or direction by letter signed by them directed to the practitioner for each of the parties and may receive such further information.
8. Save as contained in the joint report, unless the parties agree in writing, no evidence may be admitted of anything said or done by any person at the conference between the experts.
9. Generally, but subject to the direction of the trial judge, the experts attending each conference will give evidence concurrently.
10. Subject to any further order, the costs of the conferences, including any administrative expenses incurred, shall be borne equally by the parties.

*Example 2*

1. A conference between experts pursuant to s 65I of the *Civil Procedure Act 2010* (Vic) is to be held on a date as soon as practicable after [date] to be arranged with the parties and Judicial Registrar [name]'s associate. The conference:
  - a) is to be subject to any further direction by, and facilitated by, Judicial Registrar [name]; and
  - b) except as directed by Judicial Registrar [name], is not to be attended by parties or their legal representatives.
2. As soon as practicable after the conference, the experts produce and send to the parties a joint report signed by each expert. The joint report must state:
  - a) the matters upon which the experts agree;
  - b) the matters upon which the experts disagree, together with the reasons and basis for their disagreement;
  - c) whether any issue cannot be resolved without further facts or investigation.

*Example 3*

1. By [date], experts of like specialisation are to confer and prepare for the trial judge a joint report that must state:
  - (a) that they are each familiar with the reports prepared by the other;
  - (b) that they have met and discussed the issues identified in the reports collectively;
  - (c) the issues on which they agree;
  - (d) the issues on which they disagree describing the difference(s) between their opinions and setting out their respective reasons for disagreeing;
  - (e) whether any issue cannot be resolved without further facts or investigation.

2. Each expert must sign the joint report, and the report must be provided to the parties on or before [date].
3. The experts, and not the parties or their legal representatives, are to determine the venue and procedure to be adopted at the conference and the content of their joint report. In the event that agreement cannot be reached about any matter relevant to the conference or joint report to the court, the experts may seek further directions from the court.
4. Subject to any order of the trial judge, the experts attending each conference will give evidence concurrently.
5. Subject to any further order, the costs of the conferences, including any administrative expenses incurred, shall be borne equally by the parties.