

USER GUIDE: FIRST DIRECTIONS ORDERS INSTITUTIONAL LIABILITY LIST



The left section of this document contains a copy of the template first directions orders provided to parties for use in new Institutional Liability List proceedings. The right section contains comments and advice for parties and practitioners to refer to when completing their proposed orders for submission to the Court.

For any enquiries concerning the template orders, please contact institutional.liability@supcourt.vic.gov.au.

IN THE SUPREME COURT OF VICTORIA
COMMON LAW DIVISION
INSTITUTIONAL LIABILITY LIST

S ECI 2023 XXXXX

BETWEEN:

NAME OF THE PLAINTIFF

Plaintiff

and

NAME OF THE DEFENDANT

Defendant

Where there is only one or two defendants, type their names directly in the header here.

If the proceeding has more than two defendants, then only include the first defendant's name, followed by 'and others according to the schedule to the Writ'.

ORDER

JUDICIAL OFFICER: Judicial Registrar Baker

DATE MADE:

There is no need to add a date here. It will be filled when the order is made.

ORIGINATING PROCESS: By writ filed Click or tap to enter a date..

HOW OBTAINED: By consent pursuant to Rule 59.07 of the *Supreme Court (General Civil Procedure) Rules 2015* ('the Rules')

ATTENDANCE: Not applicable.

OTHER MATTERS:

THE COURT ORDERS BY CONSENT THAT:

Ensure all dates in this section are weekdays and not weekends or public holidays.

Trial and trial fees

1. The proceeding is set down for trial in the Choose an item. circuit sittings commencing Click or tap to enter a date. before a Choose an item. on an estimate by the parties that the trial will occupy XX sitting days.

Ensure an estimate for the trial duration is included here.

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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* (Vic) as if the date fixed/set down for hearing is the date of commencement of the circuit. Where applicable, the first day jury fee is to be paid at the same time as the setting down fee.
 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 in the circuit.

Amendments to the timetable

4. For all interlocutory steps occurring prior to the post-mediation directions hearing, the parties may extend or abridge such dates in the interlocutory timetable by consent in accordance with rule 3.02(3) of the Rules without seeking further orders of the Court.
5. For all steps occurring after the post-mediation directions hearing, for the purposes of rule 3.02(3) of the Rules, the parties are required to obtain orders of the Court in order to extend or abridge such dates in the interlocutory timetable.
6. Where an agreed change to the timetable results in a need to adjourn the post-mediation directions hearing by consent, the parties are to jointly notify the Court at least seven days prior to the hearing date by emailing institutional.liability@supcourt.vic.gov.au advising of the parties' agreed revised date for the mediation of the proceeding. If appropriate, the post-mediation directions hearing will be adjourned pursuant to rule 34.05 of the Rules without the need for the parties to seek consent orders to this effect.

Pleadings and particulars

7. The defendant is to file and serve a defence by Click or tap to enter a date..
8. The parties are to make any request for further and better particulars by Click or tap to enter a date..
9. The parties are to file and serve any further particulars required within 28 days of receipt of the request for further and better particulars.
10. The defendant is to file and serve any third party notices by Click or tap to enter a date..
11. The defendants are to file and serve any notices of contribution by Click or tap to enter a date..
12. Any application by the plaintiff pursuant to s.27QB or s.27QD of the *Limitation of Actions Act 1958* (Vic) to set aside a previous judgment or any previous settlement agreement and any judgment or order giving

If a document such as a defence has already been filed then the relevant paragraph can be removed.

Paragraph 11 should be deleted if there is only one defendant in the proceeding.

effect to the settlement of a previously settled cause of action is to be made by [Click or tap to enter a date.](#)

Discovery and interrogatories

13. All parties are to make discovery (including full inspection) in accordance with the Rules and file and serve an affidavit of documents by [Click or tap to enter a date.](#)
14. If parties wish to interrogate, they are to file and serve interrogatories for the examination of another party by [Click or tap to enter a date.](#)
15. Answers to interrogatories are to be filed and served in accordance with the Rules.

Evidence

16. Subpoenas submitted for issuing by the Prothonotary must not include reference to the Institutional Liability List (including in the document heading).
17. Subject to the following order, any subpoena under Order 42A of the Rules is to be issued and served by no later than eight weeks prior to the trial date.
18. Any application for leave to compel the production of a document containing a ‘confidential communication’ within the meaning of Division 2A of Part II of the *Evidence (Miscellaneous Provisions) Act 1958 (Vic)* is to be made by [Click or tap to enter a date.](#)
19. The parties are to exchange any medical and/or expert reports concerning damages and liability, including those required to be served under Order 33 or Order 44 of the Rules, by [Click or tap to enter a date.](#)
20. The plaintiff is to serve particulars of special damages, loss of earnings and loss of earning capacity, along with supporting documentation by [Click or tap to enter a date.](#)
21. No later than six weeks before the commencement of the circuit:
 - a. the parties are to exchange any supplementary medical and expert reports concerning damages and liability from experts or medical practitioners whose reports have previously been served in the proceeding, along with supporting documentation; and
 - b. the plaintiff is to serve any final particulars of special damages, loss of earnings and loss of earning capacity.

To allow time for applications to be determined, the date in paragraph 18 should be at least 6 weeks before the date in paragraph 17.

Mediation and post-mediation directions hearing

22. The parties are to have attended a mediation of the proceeding by [Click or tap to enter a date.](#)
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23. Within 3 days prior to the date for the mediation, the legal practitioners for the defendants are to confer, by telephone or in conference, for the purpose of addressing the issue of contribution of their respective clients towards any resolution of the plaintiff's claim.

Paragraph 23 should be deleted if there is only one defendant in the proceeding.

24. The parties are to notify the Court of the status of the proceeding within seven days of the mediation.

25. Should the proceeding not resolve at mediation, the parties are to attend a post-mediation directions hearing on [Click or tap to enter a date.](#) **(Court use only).**

Parties are not required to insert a directions hearing date; this will be allocated by the Court.

26. At least two days prior to the post-mediation directions hearing, the parties are to file a list of witnesses.

27. At the post-mediation directions hearing, the parties are to advise the Court:

- a. whether the court ordered timetable has been complied with;
- b. what issues remain in dispute;
- c. whether it is proposed to seek leave to amend any pleading or join further parties;
- d. whether the initial estimate of the length of the trial requires adjustment;
- e. the areas or issues in respect of which each party intends to adduce expert evidence;
- f. the utility of experts conducting a conference or preparing a joint report, if appropriate; and
- g. whether it is proposed to seek leave to rely upon expert reports not served in accordance with these orders.

Costs

28. Costs in the proceeding.

Consent of the parties

Signature

Solicitors for the Plaintiff

Date: [Click or tap to enter a date.](#)

Signature

Solicitors for the Defendant

Date: [Click or tap to enter a date.](#)

Type the name of the relevant firm or practitioner, or insert an image signature or stamp. No separate signed PDF file is required if all parties sign the Word document.