



Supreme Court of Victoria

Practice Note SC CC 8

Oppression Proceeding Program

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 procedure to be followed for oppressive conduct applications made pursuant to s 233 of the *Corporations Act 2001* (Cth)..

2. COMMENCEMENT

- 2.1 This Practice Note was revised on 23 December 2025 and replaces the version issued on 18 May 2018.
- 2.2 This Practice Note sets out a streamlined procedure for the case management of oppression proceedings in the Court.
- 2.3 This Practice Note, as revised, will apply to all oppressive conduct proceedings in the Corporations List seeking relief under s 233 of the Act from the date of issue, and whether or not other relief is also sought in the proceeding.

3. DEFINITIONS

- 3.1 In this Practice Note:

Act means the *Corporations Act 2001* (Cth)

ASIC means the Australian Securities and Investments Commission

Oppression Proceeding Program (OPP) means the procedure referred to in paragraph 5 of this Practice Note

Rules means the *Supreme Court (Corporations) Rules 2023* (Vic)

4. PURPOSE OF THE OPPRESSION PROCEEDING PROGRAM

- 4.1 Many applications are filed in the Court each month seeking relief under s 233 of the Act where it is alleged that the affairs of a company have been conducted in an oppressive manner. Under the Rules, such applications must be commenced by originating process.¹ Unless the Court otherwise directs, the originating process² must be supported by an affidavit stating the facts in support of the process and must annex an ASIC search of the company.³
- 4.2 A large percentage of the claims seeking relief under s 233 of the Act relate to small businesses, frequently family businesses. Often, the value of the business is not substantial. Nevertheless, applications are often supported by affidavits which run to many pages and considerable detail.
- 4.3 The OPP is designed to facilitate the just, efficient, timely and cost effective resolution of the real issues in dispute in applications under s 233 of the Act. In particular, the OPP promotes the parties exploring resolution of the dispute through mediation at a very early stage of the proceeding before significant costs have been incurred.

5. OPPRESSION PROCEEDING PROGRAM

5.1 Entry into the OPP

- 5.1.1 Applications for relief under s 233 of the Act are to be made by originating process filed via RedCrest⁴ and supported by an affidavit which:
- (a) is no more than three pages in length;
 - (b) sets out a clear and succinct summary of the facts alleged to constitute the oppressive conduct;
 - (c) identifies the shares, business, assets, or other property that it is said should be the subject of valuation, and, where practicable, sets out a preliminary estimate of the value of the same;
 - (d) exhibits a current ASIC search of the company;
 - (e) exhibits a list on a single page that succinctly sets out each act or omission relied upon, and when each act or omission is said to have occurred; and
 - (f) has no other exhibits.

¹ Rule 2.2(1)(a) of the Rules.

² Rule 2.4(1) of the Rules.

³ Rule 2.4(2) of the Rules.

⁴ See Order 28 of the *Supreme Court (General Civil Procedure) Rules 2025* (Vic).

- 5.1.2 In preparing the affidavit, practitioners should have regard to the relevant authorities which provide examples of the type of conduct that may ground a claim under s 233 of the Act.
- 5.1.3 Upon initiation, the matter will be entered into the Judge-Managed Corporations List and will attract an 'Entry into List fee' in accordance with regulation 10(3) of the *Supreme Court (Fees) Regulations 2018* (Vic).
- 5.1.4 The Corporations List Judge will review the proceeding to decide whether it is a matter which lends itself to management under the OPP or whether the characteristics of the case suggest it would be more appropriately managed and determined by a Judge.
- 5.1.5 If the matter is considered suitable for inclusion in the OPP, the Corporations List Judge will make orders on the papers (**Referral Order**):
- (a) referring the proceeding to the OPP;
 - (b) setting the date by which the defendant(s) is to file any responsive affidavit; and
 - (c) setting the date for the return of the application at the initial conference before a Judicial Registrar (**Initial Conference**).
- 5.1.6 If the defendant(s) has not yet filed a Notice of Appearance in the proceeding, the plaintiff(s) will be required to serve a copy of the Referral Order on the defendant(s) no later than one week after the date of the Referral Order.

5.2 **Matters to be addressed prior to the Initial Conference**

5.2.1 The Court expects that prior to the Initial Conference the parties will give consideration to at least the following procedural steps required to facilitate listing the matter for mediation: the filing of any further affidavits; identifying the manner in which books and records of the company are kept and how access will be facilitated; identifying a valuer and the matters required for valuation; and what, if any, other documents are required for mediation.

5.2.2 *Responding affidavits*

- (a) The Court expects the defendant(s) to file a responding affidavit no later than one week prior to the Initial Conference.
- (b) The responding affidavit should:
 - (i) be no more than three pages in length;
 - (ii) set out a clear and succinct summary of the defendant's response to the plaintiff's summary of the facts alleged to constitute the oppressive conduct;

- (iii) identify the shares, business, assets, or other property that it is said should be the subject of valuation, and, where practicable, set out a preliminary estimate of the value of the same;
- (iv) identify the facts which support any possible counterclaim or offsetting claim;
- (v) exhibit a list on a single page succinctly responding to the plaintiff's list of acts and omissions; and
- (vi) have no other exhibits other than an ASIC search of any related entities referred to in the affidavit.

5.2.3 *Access to books of the company*

- (a) At the first return of the originating process, it is common for orders to be made for inspection and copying of the books of the company, for valuation of the shares in the company and for mediation.
- (b) Section 247A of the Act permits a member of a company to apply to the Court for an order to inspect the company's books, provided they are acting in good faith and for a proper purpose.
- (c) The Court is of the view that generally in OPP matters, an order pursuant to s 247A of the Act is an efficient way for all parties to have access to documents necessary for the purpose of preparation of a valuation and mediating the dispute. When appropriate, orders may also be made for the exchange of 'critical documents' under s 26 of the *Civil Procedure Act 2010* (Vic).
- (d) In anticipation of the Court making orders for access to the books of the company, the Court expects the parties to identify: where the books of the company are held; whether the books are in hard copy or electronic format; and how inspection of the company's books should occur in the most cost efficient manner (eg, physical inspection, electronic production, access to electronic records through the provision of passwords).

5.2.4 *Joint valuation by court-appointed expert*

- (a) It is the Court's strong preference that a single expert is appointed to prepare a joint valuation in respect of the shares, business, assets, or other property to be valued. The purpose of the joint valuation is to provide the parties with an independent report aimed at ascertaining the value of their respective shareholdings in order to narrow issues in dispute at the mediation.

- (b) Competing valuations prepared by each party are discouraged for the purposes of the OPP.
- (c) Prior to the Initial Conference the parties should give consideration to the scope of the joint valuation and what is required to prepare for mediation.
- (d) The Court will only refer the matter to mediation without a valuation in exceptional circumstances.

5.3 Initial Conference

- 5.3.1 The parties (as well as their practitioners) are required to attend the Initial Conference. The Judicial Registrar will explore with the parties the procedural orders required to prepare the matter for mediation and to list the mediation. A template form of orders usually made at the Initial Conference are annexed to this Practice Note and should be the subject of conferral between the parties ahead of the Initial Conference.
- 5.3.2 Orders for points of claim, points of defence and more detailed affidavits are unlikely to be made until after the mediation.
- 5.3.3 A number of matters will be listed for an Initial Conference before a Judicial Registrar on the same day. Whilst the parties are encouraged to adopt a pragmatic and collaborative approach to identifying any necessary preliminary steps, consent orders will not be made in advance of the Initial Conference.
- 5.3.4 If urgent orders are sought at the Initial Conference that are beyond the jurisdiction of the Judicial Registrar, or for some other reason the presiding judicial officer forms the view that the application should be referred back to the Corporations List Judge, then that referral will be made.

5.4 Mediation

- 5.4.1 Matters under the OPP will generally be mediated by either an Associate Judge or a Judicial Registrar. In some cases, the matter may be considered appropriate for referral to external private mediation.
- 5.4.2 If a matter does not resolve at the mediation, an Associate Judge or Judicial Registrar may make consent or other directions for the future conduct of the matter including referring the matter to a Judge for further directions and/or hearing
- 5.4.3 As to the form of orders for the future conduct of the proceeding, the parties should have regard to the requirements for the second directions hearing in Part 6 of Commercial Court Practice Note SC CC1, including Annexure C to that Practice Note.

AMENDMENT HISTORY

30 January 2017: This Practice Note was issued on 30 January 2017 and replaced Practice Notes No 13 of 2015 and No 5 of 2014.

18 May 2018: This Practice Note was revised on 18 May 2018 and replaced the version issued on 30 January 2017, as revised on 19 July 2017.

23 December 2025: This Practice Note was revised on 23 December 2025 and replaced the version issued on 30 January 2017 as revised on 19 July 2017 and 18 May 2018.

Vivienne Mahy
Executive Associate to the Chief Justice
23 December 2025

**ANNEXURE A TO PRACTICE NOTE SC CC 8 – OPPRESSIVE
CONDUCT IN THE AFFAIRS OF A COMPANY**

IN THE SUPREME COURT OF VICTORIA

COMMERCIAL COURT
CORPORATIONS LIST

S ECI [INSERT]

IN THE MATTER of [INSERT]

BETWEEN:

[insert]

Plaintiff

- and -

[insert]

Defendant

[(and others according to the attached schedule)]

GENERAL FORM OF ORDER

JUDICIAL REGISTRAR: [insert Judicial Registrar]

DATE MADE: [insert date]

ORIGINATING PROCESS: [Writ] filed [insert date]

HOW OBTAINED: [insert as applicable]

APPEARANCES: [insert]

- OTHER MATTERS:
- A. The proceeding was referred to the Judicial Registrar for case management under *Practice Note SC CC 8 – Oppression Proceeding Program* and pursuant to [rule 84.03/84.04] of the *Supreme Court (General Civil Procedure) Rules 2025 (Vic)* ('Rules') by order of [insert name of Judge or Associate Judge] dated [insert date].
 - B. This Order is authenticated by the Judicial Registrar pursuant to rule 60.02(1)(b) of the Rules.

THE COURT ORDERS THAT:

Access to Books and Records

1. Pursuant to s 247A of the *Corporations Act 2001* (Cth), the and one representative of each of [his/her] legal and accounting advisers is authorised to inspect the books of ('**the Company**') (as the term 'books' is defined in s 9 of the *Corporations Act 2001* (Cth)) by
2. The by its officers and employees, including, must make the books of the Company available for inspection and copying in accordance with order 1 above between the hours of 9:00am and 5:00pm commencing on and ending on

Valuation

3. An independent person [or *where already agreed*] ('**the Valuer**') be appointed to express an opinion as to the value of the [shares] of the Company.
4. In the event the parties are unable to reach agreement about the identity of the Valuer by they shall immediately notify the Court and provide details of their respective candidates, including résumés, rates and availability. The Valuer shall then be selected by the Court.
5. The plaintiff is to provide to the Valuer a copy of each document which the parties or either of them wish the Valuer to see for the purposes of the valuation by **4:00pm** on
6. Any submission which either party wishes to make to the Valuer must be in writing and provided to the Valuer and to the other party by **4:00pm** on
7. Any submission in reply be in writing and provided to the Valuer by
8. The Valuer may inspect all or any of the books of the Company (as the term 'books' is defined in s 9 of the *Corporations Act 2001* (Cth)) for the purposes of the valuation.
9. Each party must comply with the reasonable requests of the Valuer, including for the provision of any information or documents, including copy documents, as soon as reasonably practicable after the making of such a request.
10. The Valuer must complete the valuation and provide a copy to the parties and the Court by **4:00pm** on
11. Subject to any further order, the costs of the Valuer be paid in the first instance by the parties in equal shares.

Mediation

12. The proceeding be referred to an Associate Judge/Judicial Registrar appointed by the Court to conduct a mediation, such mediation to take place by

13. The mediation must be attended by those persons who have the ultimate responsibility for deciding whether to settle the dispute and the terms of any settlement and the lawyers who have the ultimate responsibility to advise the parties in relation to the dispute and its settlement.
14. No later than 5 business days before the date appointed for the mediation, each party is to notify ADRCentre@supcourt.vic.gov.au with the names and contact details of all persons expected to attend the mediation, including in the case of a virtual mediation listing, the email addresses of each attendee requiring a link.
15. Subject to any further order, the costs of the mediation are to be paid in the first instance by the plaintiff(s) with the defendant(s) to reimburse the plaintiff(s) as to half the mediation fee within 3 business days of the mediation.
16. By the mediator notify the Court regarding the outcome of the mediation.

Liberty to Apply and Anticipated Non-compliance

17. Liberty to apply is reserved to the parties and the Valuer on reasonable notice.
18. In advance of any anticipated non-compliance with the timetable set by these Orders, the parties are to take the following steps prior to the time for compliance:
 - (a) confer with respect to amendments to the timetable; and
 - (b) email the Associate to [insert Judicial Registrar] to explain the reason that further time may be required and provide draft minutes of order addressing a revised timetable.

Further Directions

19. The further hearing of the proceeding is adjourned for further directions to **20XX at 10:30am.**

Other

20. Costs reserved.

DATE AUTHENTICATED:

[INSERT JUDICIAL REGISTRAR]

SCHEDULE OF PARTIES

CASE NO

BETWEEN: