



## **Trial Division**

### **Practice Note No. 5 of 2008**

#### **Personal Injuries List**

#### **1. INTRODUCTION**

- 1.1 The practices and procedures set out in this Practice Note will apply from 1 January 2009 to relevant proceedings commenced in the Trial Division on or after that date.
- 1.2 The Judges-in-Charge of the Personal Injuries List (“the List”) are Justices Williams, Kaye, Forrest and Beach. Their Honours are assisted by the Master-in-Charge of the List, Master Kings.
- 1.3 Contact details for the associates to the Judges-in Charge and the Master-in-Charge of the List can be found on the List webpage on the Supreme Court website: [www.supremecourt.vic.gov.au](http://www.supremecourt.vic.gov.au). The List webpage itself may be found by navigating from the Court homepage to *Lists and Sittings*, then to *Specialist Lists*, and then to *Personal Injuries List*.

#### **2. INCLUSION IN THE LIST**

- 2.1 The following types of proceedings in the Trial Division of the Court issued out of the Melbourne Registry will be included in the List:
  - Personal injury claims in which a serious injury certificate has been granted under the *Transport Accident Act 1986* (“the TAA”) by the Transport Accident Commission (“TAC”).

- Personal injury claims in which a serious injury certificate has been granted under the *Accident Compensation Act 1985* (“the ACA”) by the Victorian WorkCover Authority (“VWA”).
- Personal injury claims in which a court has given leave to commence proceedings under the TAA or the ACA.
- Proceedings brought by TAC under s. 104 of the TAA.
- Proceedings brought by VWA under s. 138 of the ACA.
- Proceedings in which plaintiffs allege that they are suffering from a terminal disease.

2.2 The heading of the originating process and all documents filed in a proceeding in the List should be endorsed “In the Personal Injuries List.”

2.3 No additional fees will be payable for the inclusion of proceedings in the List.

### **3. FIRST DIRECTIONS HEARING IN ALL BUT TERMINAL DISEASE CASES**

3.1 The Master-in-Charge of the List will give directions for the management of a proceeding in the List at a first directions hearing.

3.2 **In all but terminal disease cases**, the Court will forward notices as to the date and time of the first directions hearing within 7 days of the filing of the defence. (The procedures for first directions hearings in terminal diseases cases are set out separately in part 4 of this Practice Note).

3.4 Practitioners are encouraged to prepare minutes of orders for the first directions hearing and for all other hearings in the List.

3.5 Before the first directions hearing, practitioners for all parties should discuss proposed orders with each other. Any proposed orders must be in Word format.

3.6 **In all but terminal disease cases**, proposed orders should generally be in the form set out in **Schedule 1** to this practice note, with adaptation in an appropriate case. The

timeline set out in **Schedule 3** provides guidance as to the anticipated timeframe from filing of defence to hearing.

- 3.7 Practitioners should email minutes of all proposed consent orders in Word format to the Associate to the Master-in-Charge at least 48 hours prior to the first directions hearing. In such cases, orders will usually be made on the papers in accordance with Practice Note No. 1 of 2005.
- 3.9 Practitioners emailing minutes of proposed consent orders must also email to the Associate to the Master-in-Charge, at least 48 hours prior to the first directions hearing, a Word format document in the form set out in **Schedule 4**, providing agreed information as to:
- (a) the nature of the claim;
  - (b) mode of trial;
  - (c) significant factual issues in the claim;
  - (d) legal issues which may arise;
  - (e) the likely duration of the trial;
  - (f) whether any other parties are likely to be joined.
- 3.10 Notwithstanding that the parties have agreed to and submitted proposed orders, the Court may require the attendance of practitioners and may not make proposed consent orders. The Associate to the Master-in-Charge will notify the parties if they are required to attend by 4.00 pm on the day before the first directions hearing.
- 3.11 Where there is no agreement for proposed consent orders, the plaintiff's practitioners should email minutes of any orders they seek to the Associate to the Master-in-Charge at least 48 hours prior to the first directions hearing and parties must attend the first directions hearing.
- 3.12 Orders will be authenticated in accordance with rule 60.04 of the Chapter I Rules.

#### 4. FIRST DIRECTIONS HEARING IN TERMINAL DISEASE CASES

- 4.1 **In terminal disease cases**, the plaintiff's practitioners must issue a summons returnable before the Master-in-Charge for the first directions hearing. The summons must be accompanied by an affidavit detailing the plaintiff's illness, current condition and prognosis.
- 4.2 The plaintiff's practitioners are encouraged to deliver minutes of orders to the other parties prior to the first directions hearings, with a view to obtaining orders by consent. Any proposed orders should generally be in the form set out in **Schedule 4**, with adaptation in an appropriate case. The timeline contained in **Schedule 3 is to be disregarded**.
- 4.3 The plaintiff's practitioners must email minutes of agreed proposed consent orders in Word format to the Associate to the Master-in-Charge by 4.00pm on the day before first directions hearing.
- 4.4 The Master-in-Charge will determine whether orders are to be made on the papers or whether parties will be required to attend the first directions hearing. The Associate to the Master-in-Charge will notify parties if they are required to attend by 5.00 pm on the day before the first directions hearing.
- 4.5 If possible, before the first directions hearing, practitioners should also email to the Associate to the Master-in-Charge a Word format document, in the form set out in **Schedule 4**, providing agreed information as to the matters listed in sub- paragraphs 3.9 (a)- (f), **together with** information as to the plaintiff's current condition and prognosis. Such a document may, otherwise, be provided in hard copy at the directions hearing.
- 4.6 At the first directions hearing, the Master-in-Charge will endeavour to fix a hearing date as soon as is practicable but with appropriate regard for ensuring that there is a fair trial.
- 4.7 Orders will be authenticated in accordance with rule 60.04 of the Chapter I Rules.

## **5. MANAGEMENT OF A PROCEEDING AFTER THE FIRST DIRECTIONS HEARING**

- 5.1 At the first directions hearing, the Master-in-Charge will fix a trial date for the proceeding and allocate it to one of the Judges-in-Charge or to another Judge (“the Trial Judge”).
- 5.2 At the first directions hearing, the Master-in-Charge will also determine whether the Master-in-Charge or the Trial Judge will have responsibility for managing the proceeding.
- 5.2 In a proceeding managed by the Master-in-Charge, the Trial Judge will have responsibility for managing the proceeding after a final directions hearing.

## **6. THE TRIAL**

- 6.1 The Trial Judge will, wherever possible, hear the trial.
- 6.2 At times, it may not be possible for the trial to be held before the Trial Judge. In such cases, the trial will be allocated to another Judge.

## **7. COMMUNICATIONS WITH THE COURT**

- 7.1 Communications with the Court should preferably be by email.
- 7.2 Communications with the Court should generally be directed to the Associate to the Master-in-Charge or the Associate to the Trial Judge where the Trial Judge is managing the proceeding.
- 7.2 All communications with the Court should be disclosed to all parties.

Vivienne Macgillivray  
Executive Associate to Chief Justice  
4 December 2008

**SCHEDULE 1 TO PRACTICE NOTE NO 5 OF 2008**

**DRAFT ORDERS FOR FIRST DIRECTIONS HEARING  
IN ALL BUT TERMINAL DISEASE CASES**

1. The proceeding be fixed for trial before Justice #     on #     , based on an estimate by the parties that the trial will occupy #     sitting days.
2. By             the Defendant file and serve its Defence (if not filed)
3. By             all parties file and serve an Affidavit of Documents.
4. By             all parties complete Inspection of Documents.
5. By             the parties issue any Subpoena under O. 42A.
6. By             all parties file and serve any Interrogatories for the Examination of any party.
7. By             all parties file and serve Answers to any Interrogatories.
8. By             all parties serve copies of any Reports required to be served under O. 33 or O. 44.
9. By             the Plaintiff deliver a List particularising any Special Damages, Loss of Earnings and Loss of Earning Capacity claimed by the Plaintiff.
10. By            the proceeding be the subject of a mediation.
11. A final Directions Hearing be held on #             .
12. The parties notify the Master-in-Charge forthwith in the event of the proceeding being resolved before the date fixed for the trial.
13. Liberty to apply be reserved to the parties.
14. The costs of the parties be costs in the proceeding.

**SCHEDULE 2 TO PRACTICE NOTE NO 5 OF 2008**

**DRAFT ORDERS FOR FIRST DIRECTIONS HEARING  
IN TERMINAL DISEASE CASES**

1. The proceeding be fixed for trial before Justice #     on #     , based on an estimate by the parties that the trial will occupy #     sitting days.
2. There be a speedy trial of the proceeding.
3. That the plaintiff be examined viva voce on oath before an examiner to be nominated by the Court. Such examination to take place at a time and place to be agreed upon by the parties. The examination be videotaped and the admissibility of the videotape be reserved for the direction of the Trial Judge.
4. By             the Defendant file and serve a Defence (if not filed)
5. By             all parties file and serve an Affidavit of Documents.
6. By             all parties complete Inspection of Documents.
7. By             all parties issue any Subpoena under O. 42A.
8. By             all parties file and serve any Interrogatories for the Examination of any party.
9. By             all parties file and serve Answers to any Interrogatories.
10. By            all parties serve copies of any Reports required to be served under O. 33 or O. 44.
11. By            the Plaintiff deliver a List particularising any Special Damages, Loss of Earnings and Loss of Earning Capacity claimed.
12. A pre-trial conference before the Registrar or the Registrar's appointee be held on #     .
13. A final Directions Hearing be held on #     .
14. The parties notify the Master-in-Charge forthwith in the event of the proceeding being resolved before the date fixed for the trial.

### SCHEDULE 3 TO PRACTICE NOTE NO 5 OF 2008

#### Timeline

<b>ACTION No.</b>	<b>ACTION</b>
1	Writ issued.
2	Defence filed.
3	<b>Within 7 days of Action 2 -</b> Court to give Notice of First Directions Hearing to be held within 28 days of Notice.
4	<b>At least 48 hours before date fixed for First Directions Hearing -</b> Parties to email to Associate to Master -in -Charge. -draft orders in form set out in <b>Schedule 1</b> - information in form in form set out <b>Schedule 4</b> as to : <ul style="list-style-type: none"><li>- nature of the claim</li><li>- mode of trial - (Judge or jury)</li><li>- length of trial</li><li>- significant factual issues</li><li>- legal issues which may arise</li><li>- likelihood of additional parties</li></ul>
5	<b>Within 28 days of Action 3 -</b> First Directions Hearing before Master-in-Charge: trial date and judge allocated - orders made generally in the form of <b>Schedule 1.</b>
6	<b>Within 35 days of Action 5 -</b> Provision of Affidavits of Documents.
7	<b>Within 14 days of Action 6 -</b> Inspection of Documents.
8	<b>Within 35 days of Action 7 -</b> Provision of Interrogatories and issue of O. 42A Subpoenas.
9	<b>Within 42 days of Action 8 -</b> Provision of Answers to Interrogatories.
10	<b>Within 28 days of Action 9 -</b> Service of O. 33 / O. 44 / Reports and list of special damages, particulars of loss of earning capacity.
11	<b>Within 42 days of Action 10 -</b> Mediation.
12	<b>Within 42 days of Action 11 -</b> Final mention (parties must attend).
13	<b>Within 28 days of Action 12 -</b> Trial.

Note: Times are the outer limits between each interlocutory step.  
Parties may consent to a more limited timetable.



**SCHEDULE 4 TO PRACTICE NOTE NO 5 OF 2008**

**Agreed Information**

**1. Nature of the claim:**

- Personal injury claim - serious injury certificate granted under the *Transport Accident Act 1986* (“the TAA”).
- Personal injury claim - serious injury certificate granted under the *Accident Compensation Act 1985* (“the ACA”).
- Personal injury claim - leave by court to commence proceedings under the TAA or the ACA.
- Proceeding by TAC under s. 104 of the TAA.
- Proceeding by VWA under s. 138 of the ACA.
- Proceeding in which plaintiff alleges a terminal disease.

**2. Mode of trial:**

- Before a Judge and jury
- Before a Judge sitting alone

**3. Significant factual issues in claim**

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**4. Legal issues which may arise**

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5. **Likely duration of the trial:** ..... (days)

6. **Whether any other parties are likely to be joined**

Yes

No

(Specify if known)

Additional plaintiffs: .....

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Additional defendants: .....

.....

Third parties: .....