



Supreme Court of Victoria

Practice Note SC CL 9

Judicial Review and Appeals List

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 procedures to be followed in the Judicial Review and Appeals List. The List is a case management list within the Common Law Division of the Court.
- 1.3 Invariably, procedure in the List will be affected by relevant statutory provisions and/or Rules of Court. Enactments of potential relevance include, in particular, the *Administrative Law Act 1978*, Order 56 or Order 58 (Part 3) of the *Supreme Court (General Civil Procedure) Rules 2015*, Order 4 of the *Supreme Court (Miscellaneous Civil Proceedings) Rules 2008* or Order 3A of the *Supreme Court (Criminal Procedure) Rules 2008*. Nothing in this Practice Note is intended to derogate from any time limits or other applicable requirements of any Act or of the Rules of Court. However, in the interests of efficiency the Court may, at an initial directions hearing or otherwise, exercise the case management powers conferred on it by the *Civil Procedure Act 2010* or the power conferred on it by Rule 2.04 of the Chapter I Rules to dispense with compliance with the requirements of particular Rules of Court.

2 DEFINITIONS

- 2.1 In this Practice Note:
 - ALA* means the *Administrative Law Act 1978*;
 - Chapter I Rules* means the *Supreme Court (General Civil Procedure) Rules 2015*;
 - Chapter II Rules* means the *Supreme Court (Miscellaneous Civil Proceedings) Rules 2008*;
 - Chapter VI Rules* means the *Supreme Court (Criminal Procedure) Rules 2008*;
 - Judge* means the judicial officer sitting in a directions hearing or other interlocutory hearing in a proceeding in the List, being one or other of the Judges in Charge of the List or, in their absence, another Judge or an Associate Judge or a Judicial Registrar, as the case may be;
 - List* means the Judicial Review and Appeals List;

List directions day means the regular day on which the Judge sits to give directions in the List as published on the List page on the Court's website;

VCAT means the Victorian Civil and Administrative Tribunal.

3 COMMENCEMENT

- 3.1 This Practice Note was issued and commences on 30 January 2017 and will apply to all proceedings in the List whenever commenced.

4 PROCEEDINGS SUITABLE FOR INCLUSION IN THE LIST

- 4.1 Subject to paragraph 4.3, the List covers proceedings in the Trial Division of the Court relating to the conduct or decisions of lower courts, tribunals and other external persons or bodies, being proceedings in the nature of judicial review or being statutory appeals (usually limited to questions of law) or referrals of questions of law, and including applications for leave to appeal or for an extension of time in such a proceeding.
- 4.2 Without limiting the generality of paragraph 4.1 but subject to paragraph 4.3, the following proceedings should be initiated in the List:
- a) Judicial review applications made pursuant to the ALA or Order 56 of the Chapter I Rules;
 - b) Appeals from a final order of the Magistrates' Court on a question of law pursuant to section 109 of the *Magistrates' Court Act 1989* or section 272 of the *Criminal Procedure Act 2009*;
 - c) Appeals from an order of VCAT on a question of law pursuant to section 148 of the *Victorian Civil and Administrative Tribunal Act 1998*;
 - d) Appeals from a final order of the Children's Court on a question of law pursuant to section 329 or section 427 of the *Children, Youth and Families Act 2005*; and
 - e) Referrals for the determination of a question of law under section 33 of the *Charter of Human Rights and Responsibilities Act 2006*.¹
- 4.3 Inclusion in the List is not appropriate for proceedings which fall within another case management list of the Court. For example, at present appeals from the Planning and Environment List of VCAT are managed in the Valuation, Compensation and Planning List, and should not be initiated in the List: see Practice Note SC CL 8. Likewise, appeals from VCAT in taxation matters are presently managed in the Taxation List. Similarly, appeals from commercial arbitrators under the *Commercial Arbitration Act 2011* or corresponding legislation are presently managed in the Arbitration List.

¹ See also Order 23 of the Chapter II Rules and Practice Note SC Gen 14 – *Notification of Matters Arising under the Charter of Human Rights and Responsibilities Act 2006*.

5 PROCEDURE FOR ENTRY INTO THE LIST

- 5.1 Proceedings of the nature set out in paragraph 4.1 should be initiated in the List by endorsing the heading of the originating process “Judicial Review and Appeals List”. The heading of all subsequent documents filed in the proceeding should also be endorsed “Judicial Review and Appeals List”.
- 5.2 If at any time after the initiation of a proceeding it appears to the Court that it is appropriate to have the proceeding managed in the List, the proceeding may be transferred into the List on the Court’s own motion.²
- 5.3 Conversely, a proceeding initiated in the List may be transferred out of the List on application or on the Court’s own motion if it appears to the Court that it is appropriate to have the proceeding managed in a different list.
- 5.4 No additional fees will be payable for the initiation of a proceeding in the List or for a transfer into the List.

6 PRE-TRIAL MANAGEMENT

Obtaining a return date for first hearing

- 6.1 Any document which requires the allocation of a first hearing date (e.g. Order 56 originating motion, summons, etc.) should be filed either:
 - i. By efilng via Citec: Pre-approval of a hearing date is **required** in order to file via Citec. In order to obtain a hearing date, the applicant should forward a completed “Judicial Review and Appeals List Hearing Date Information Form” (Schedule 2) together with a draft of the proposed document requiring a first hearing date via email to judicialreview@supcourt.vic.gov.au. The applicant will be advised by email of the return date. The document should be filed within 48 hours of this advice or the return date may not be guaranteed. A copy of the advice must be provided when filing.
 - or:
 - ii. In person at the Principal Registry: A party may obtain pre-approval of a hearing date by following the steps in (i) above. Alternatively, a document requiring allocation of a first hearing date may also be accepted for filing without pre-approval. Where pre-approval has not been sought, the initiating party will be required to complete the “Judicial Review and Appeals List Hearing Date Information Form” at the time of filing. A date for the first hearing will be allocated after review of the initiating party’s documents by a registry lawyer. If the documents are in order, copies of sealed documents for service will be ready to be returned to the initiating party on the following business day.

² An example may be a proceeding commenced by writ which is or turns out to be, in substance, in the nature of an application for a judicial review.

Procedure on first hearing

- 6.2 With the exception of urgent applications (e.g. for a stay), the first hearing in a proceeding in the List will generally be for directions only and no substantive applications will be entertained.
- 6.3 Proceedings in which all parties are represented and which do not require leave will normally be listed for pre-trial directions before the Associate Judge in charge of listings on any Tuesday in the Court sitting period. At that hearing, the Associate Judge will usually fix the matter for trial.
- 6.4 All other new proceedings will be listed for directions before the Judge on a List directions day. At the directions hearing, the Judge:
- (i) will fix a timetable for interlocutory steps and trial date in most matters and make orders in relation to the hearing of any application for leave or of any other foreshadowed interlocutory applications;
 - (ii) may order that an application for leave to appeal be referred to the Judge or Associate Judge who would hear the substantive appeal pursuant to one of the expedition rules, such as rule 4.14 of the Chapter II Rules or rule 3A.08 of the Chapter VI Rules.

Consent minutes

- 6.5 Whether a proceeding is listed for first hearing before the Associate Judge in charge of listings or the Judge, parties are encouraged to submit minutes of consent in accordance with Schedule 1. Consent minutes should include an agreed timetable and “not before” date for trial to enable orders to be made on the papers without the need for an appearance. Parties are nevertheless required to appear unless advised to the contrary.
- 6.6 Consent minutes should be sent via email in both editable and PDF formats no later than 4:00pm on the Monday preceding the directions day:
- (a) in relation to hearings before the Associate Judge in charge of listings, to daly.associate@supcourt.vic.gov.au (cc: orders@supremecourt.vic.gov.au)
 - (b) in relation to hearings before the Judge, to judicialreview@supcourt.vic.gov.au (cc: orders@supremecourt.vic.gov.au).

Interlocutory Applications

- 6.7 Prior to filing a summons for an interlocutory application, the proposed applicant must obtain a return date by forwarding a completed “Judicial Review and Appeals List Hearing Date Information Form” (Schedule 2) together with a draft of the proposed summons via email to judicialreview@supcourt.vic.gov.au. The applicant will be advised by email of the return date. The summons should be filed, in person or via efilng, within 48 hours of this advice or the return date may not be guaranteed. A copy of this advice should be provided to Principal Registry when filing the summons.

Appeals from Associate Judges

- 6.8 The procedure for any appeal from an order made by an Associate Judge in relation to any proceeding in the List is governed by *Practice Note SC Gen 8 – Appeals from Associate Judges*.

7 AFFIDAVITS

- 7.1 Almost always, the proceeding will be heard and determined on affidavit and the moving party will be required to file and serve an affidavit in support of the claim at the outset or at an early stage.
- 7.2 Affidavits and exhibits of any party should be limited to what is necessary for the proper hearing and determination of the proceeding. With limited exceptions, it will be inappropriate to refer to or to exhibit material that was not before the Court, tribunal or other external person or body concerned.

8 CONSENT ORDERS SETTING ASIDE A DECISION OR REMITTING A MATTER

- 8.1 Where proposed consent orders would set aside or vary a decision under review or appeal or would involve the remittal of any matter or would otherwise affect the conduct or the result of a proceeding or matter before an external decision-maker, judicial power is engaged in relation to the functions of a public authority, and the Court may need to consider for itself whether the orders should be made, particularly where the proceeding or matter affected is executive or administrative in nature.³ Where orders of such a kind are sought “on the papers”, a joint memorandum explaining the legal justification for the proposed orders must be provided to the Court. The Court may nevertheless require the attendance of practitioners. Even if satisfied that the proposed consent orders are appropriate, the Court may consider it necessary to publish reasons for the making of the orders or at least to direct that a copy of the joint memorandum be served on the decision-maker affected together with a copy of the orders made.⁴

9 COURT BOOKS AND BOOKS OF AUTHORITIES

- 9.1 A court book is required for any proceeding in the List.
- 9.2 The purpose of the court book is to provide to the Court and the parties an accessible bundle of copy documents which will be used at the substantive hearing of the proceeding.
- 9.3 Practitioners will be expected to agree upon the contents of the court book.
- 9.4 As a general principle, the court book should include copies of all documents which a party reasonably expects will be relevant to the Court’s decision.

³ See *Irwin v Military Rehabilitation and Compensation Commission* (2009) 174 FCR 574 at 577 [12]-[16] and cases there cited, especially *Kovalev v Minister for Immigration and Multicultural Affairs* (1999) 100 FCR 323.

⁴ See the cases referred to in the previous footnote.

Copies of the official record of the conduct or decision under review or appeal (where available) or a statement of the conduct or decision, and copies of critical documents relating to it, including any relevant statement of reasons, must be included. In addition, the court book should generally include the originating process in the JRA proceeding itself, all affidavits (including exhibits) which bear substantively upon the JRA proceeding (as finally amended), key orders made in the JRA proceeding and the written submissions of the parties filed in the JRA proceeding.

- 9.5 Unnecessary or duplicated documents are not to be included. However, if it appears that a necessary document has been omitted from the court book, the tender of that document in evidence at the hearing will not be rejected for that reason.
- 9.6 The court book should contain copies of documents only and not original documents.
- 9.7 A document in the court book may be tendered as authentic without formal proof unless a party objects. If a party intends to object to the authenticity of a document, it should notify all other parties as soon as practicable.
- 9.8 Generally:
 - a) the court book should contain an index of its contents and each page of the court book should be paginated;
 - b) the index should list the documents in chronological order; and
 - c) the index should include at least the following descriptive fields or categories:
 - i. court book number (which must run sequentially from beginning to end);
 - ii. document date;
 - iii. document description;
 - iv. document source or provenance;
 - v. court book page number at which the document commences; and
 - vi. court book page number at which the document ends.
- 9.9 The Court will generally order that a single joint book of authorities be prepared by the plaintiff/applicant/appellant for the use of the Judge, following an exchange of lists of authorities between the parties. Where only a short part of a lengthy authority is relied upon, that part should be identified in the index of authorities and the parties should use their discretion as to the part or parts to be included in the book of authorities.

10 USE OF TECHNOLOGY

- 10.1 The provisions of Practice Note SC Gen 5 “Technology in Civil Litigation” apply to proceedings in the List.
- 10.2 For the purposes of paragraph 9.11 of that Practice Note, documentary evidence in excess of 1500 pages is to be considered a large amount of documentary evidence.

11 COMMUNICATIONS WITH THE COURT

- 11.1 At all stages of the proceeding, communications with the Court should be by email with a copy to all other parties, and should be confined to uncontroversial matters.
- 11.2 Communications should be directed to judicialreview@supcourt.vic.gov.au.
- 11.3 Parties are reminded that pursuant to rule 27.03(11)(b) of the *Supreme Court (General Civil Procedure) Rules 2015*, all court documents must include the name and email address of an individual to whom reference can be made in respect of the proceeding.

AMENDMENT HISTORY

30 January 2017: This Practice Note was issued on 30 January 2017 and replaced Practice Note No 9 of 2015.

Vivienne Macgillivray
Executive Associate to the Chief Justice
30 January 2017

SCHEDULE 1
Judicial Review and Appeals List
Standard directions

Dispensing with requirements of Rules*

1. The [*relevant party*] has leave to bring this application for directions before a Judge.
2. Compliance/Further compliance with the requirements of [*specify the relevant rule, eg Rule 58.10 of the Chapter I Rules*] is dispensed with.

Leave to appeal*

3. The applicant/appellant have leave to appeal against the decision/order of [*insert name of decision-maker*] in [*insert name of court or tribunal or other external body*] proceeding [*insert proceeding reference number*] made on [*insert date*] in respect of the following questions of law: [].

Extension of time*

4. Time be extended pursuant to [*insert relevant provision*] so far as necessary to authorise the commencement by the plaintiff/applicant/appellant of this proceeding.

Leave to amend*

5. The plaintiff/applicant/appellant have leave to file and serve an amended application/notice of appeal/originating motion by 4.00pm on [e.g. first directions hearing + 2 weeks].

Affidavits

6. The plaintiff/applicant/appellant file and serve any further affidavits upon which he/she/it intends to rely by 4.00pm on [e.g. first directions hearing + 4 weeks].
7. The defendant/respondent file and serve any affidavits upon which he/she/it intends to rely by 4.00pm on [e.g. first directions hearing + 6 weeks].

Adjournment of directions hearing/summons*

8. The directions hearing/summons filed [*insert date of filing of summons*] be adjourned to [*insert date*].

Submissions and lists of authorities

9. The plaintiff/ applicant/ appellant file and serve a written outline of submissions and list of authorities by 4.00pm on [e.g. first directions hearing + 8 weeks].
10. The defendant/ respondent file and serve a written outline of submissions in response and a list of authorities, and serve copies of all authorities not also relied upon by the plaintiff/ applicant/ appellant, by 4.00pm on [e.g. first directions hearing + 10 weeks].
11. The plaintiff/ applicant/ appellant file and serve a written outline of submissions in reply and any additions to the list of authorities by 4.00pm on [e.g. first directions hearing + 12 weeks].

Court book

12. The plaintiff/ applicant/ appellant file and serve a court book and a combined book of authorities by 4.00pm on [e.g. first directions hearing + 12 weeks].
13. Original exhibits to all affidavits filed are to be made available to the Court at the hearing.

Hearing

14. The Notice of Trial shall be in Form 48B.
15. The proceeding be referred to the Listing Associate Judge to be listed for trial on an estimate of [] day(s), not before [e.g. first directions hearing + 13 weeks].

Costs

16. Costs be reserved/ The costs of the parties be costs in the proceeding.

Liberty to apply

17. The parties have liberty to apply.

**Omit if inapplicable*

Schedule 2

Judicial Review and Appeals List Hearing Date Information Form



Once completed, please send this form together with the proposed document requiring a hearing date to judicialreview@supcourt.vic.gov.au

Hearing Return Date and Judicial Officer (Court Use Only)	
Proceeding number (if an existing proceeding):	
Summary of proceeding or proposed proceeding: Provide a short summary of the nature of the proceeding or proposed proceeding.	
Who is bringing the proposed proceeding or relevant application in the proceeding? Party type and name of party.	
Nature of hearing: Specify whether initial directions hearing or hearing of summons for interlocutory relief.	
Affidavits relied upon:	
Rule or legislative provision under which hearing/application is brought:	
Estimate of hearing time required (hours):¹	
Other requirements as to hearing date: Include reasons for any urgency and/or any dates <i>unsuitable</i> for the applicant.	
Whether directions sought or interlocutory application is Opposed / Unopposed / Ex-Parte / by consent:	
Firm name:	
Practitioner with conduct:	
Direct telephone number:	
Email address:	
Defendant/respondent contact details (email/phone if known):	
Date and signature:	

¹ The applicant must notify the court immediately upon becoming aware that the hearing is no longer required, has become a consent matter, is no longer opposed or if the hearing estimate has been revised in any way, by contacting judicialreview@supcourt.vic.gov.au.

