



Practice Note 4. of 2014

New Structure of Trial Division

1 The Chief Justice has approved the issue of the following Practice Note.

Divisional Structure:

2 The Judges of the Court have determined that from 1 September 2014 the Commercial and Equity Division will be known as the Commercial Court, and the Commercial Court as a sub-division of the Commercial and Equity Division will cease to exist.

3 Given this change, the divisions of the trial division of the Court will consist of:

- Commercial Court;
- Common Law Division; and
- Criminal Division.

4 Each division will have a Principal and Deputy Principal Judge whose responsibilities will include:

- Overall supervision of cases in the division;
- Chairing regular meetings of the division; and
- Maintaining links with members of the legal profession practising in the divisions.

5 The Chief Justice may from time to time allocate Judges, Associate Judges and Judicial Registrars to a division.

Commercial Court:

6 The Commercial Court will comprise Judges, Associate Judges and a Judicial Registrar appointed by the Chief Justice from time to time.

7 The business of the Commercial Court will continue to be managed through such Lists as may be determined by the Chief Justice from time to time. At present those Lists are:

- General Commercial Lists A–E;
- Corporations List;
- Arbitration List;

- Taxation List;
- Admiralty List;
- Technology, Engineering and Construction List; and
- Intellectual Property List.

8 The Commercial Court will continue to hear and determine the following categories of cases:

- (a) those which arise out of ordinary commercial transactions, including any proceeding relating to–
 - (i) the construction of commercial, shipping or transport documents;
 - (ii) the export or import of merchandise;
 - (iii) the carriage of goods for the purpose of trade or commerce;
 - (iv) insurance;
 - (v) banking;
 - (vi) finance;
 - (vii) commercial agency;
 - (viii) commercial usage;
- (b) those in which there is a question that has importance in trade or commerce;
- (c) those in which a remedy is sought under the *Corporations Act 2001* (Cth) and *ASIC Act 2001* (Cth);
- (d) those in which Court assistance is required to support an arbitration, enforce an award or review a decision;
- (e) those in which a substantial issue is raised in respect of technology, engineering and/or construction;
- (f) those in which proceedings concern loss or damage to a ship or by a ship, or to goods carried by sea and/or is brought pursuant to the *Admiralty Act 1988* (Cth);
- (g) those in which a substantial issue is raised in respect of taxation, including proceedings regarding taxation recovery and damages against a taxation adviser; and
- (h) those in which a substantial issue is raised in respect of intellectual property.

9 Mortgage default, debt recovery and related enforcement proceedings initiated in the Commercial Court will ordinarily be managed by an Associate Judge in the civil management list, unless assigned to a specific judge-managed List after the filing of a defence.

10 Proceedings already initiated in the Commercial and Equity Division will continue to be managed in the Civil Management List or by a Judge, with the exception of Probate matters

and matters arising under Part IV of the *Administration and Probate Act 1958*, which will be transferred to the Common Law Division.

- 11 The management of cases by Judges of the Commercial Court will be the subject of a separate Practice Note.

Common Law Division:

- 12 The Common Law Division will comprise Judges and Associate Judges appointed by the Chief Justice from time to time.

- 13 At present, the Common Law Division includes the following specialist Lists:

- Circuit;
- Judicial Review and Appeals;
- Major Torts;
- Personal Injuries;
- Professional Liability; and
- Valuation, Compensation and Planning.

- 14 The Common Law Division will continue to manage the following matters:

- Any other proceeding founded or concurrently brought in tort and in breach of contract or statute or is ancillary matter;
- Industrial and employment law; and
- Property law.

- 15 Appeals from VCAT regarding taxation and appeals from the Commissioner of State Revenue which are presently initiated in the Commercial and Equity Division will hereafter be initiated in the Common Law Division and managed by a Commercial Court Judge.

- 16 Probate and matters arising under Part IV of the *Administration of Probate Act 1958* which are presently initiated in the Commercial and Equity Division will hereafter be initiated and managed in the Common Law Division.

Criminal Division:

- 17 The Criminal Division will continue to hear criminal trials, criminal interlocutory applications and any other matter deemed appropriate.

Allocation of Cases to the Divisions and Lists:

- 18 If at any time after the issue of a proceeding in a particular division it appears to the court that it is more appropriate to have it determined in another division or List, the proceeding may be transferred to that division or List. Additional court fees may apply upon transfer.

Allocation of Cases for hearing:

- 19 The Associate Judge in Charge of Listing will continue to list civil cases for hearing except where a proceeding is fixed for trial by the Judge in Charge of a List in the Commercial Court. Listing of all matters by the Associate Judge will be undertaken in consultation with the relevant Principal or Deputy Principal Judge.

Vivienne Macgillivray

Executive Associate to the Chief Justice

29 August 2014