



## Trial Division

### Practice Note No. 4 of 2008

### Judicial Review and Appeals 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 Judicial Review and Appeals List (“the List”) are Justices Cavanough and Kyrou. Their Honours are assisted by the Masters-in-Charge of the List, Masters Kings and Daly. Contact details for the Judges’ and Masters’ associates 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 may be found by navigating from the Court homepage to *Lists and Sittings*, then to *Specialist Lists*, and then to *Judicial Review and Appeals List*.
- 1.3 References in this Practice Note to the Chapter I Rules are references to the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) as amended from time to time. References to the Chapter II Rules are references to the *Supreme Court (Miscellaneous Civil Proceedings) Rules 2008* (Vic) as amended from time to time.
- 1.4 Practitioners are referred, in particular, to Order 56 and part 3 of Order 58 of the Chapter I Rules, and to Order 4 of the Chapter II Rules, the provisions of one or other

of which will be relevant to most proceedings in the List. Nothing in this Practice Note is intended to derogate from any applicable requirements of the Rules.

## 2. INCLUSION IN THE LIST

2.1 Subject to paragraph 2.3 of this Practice Note, inclusion in the List is appropriate for the following types of proceedings in the Trial Division of the Court:

- judicial review applications made pursuant the *Administrative Law Act 1978* (Vic) or Order 56 of the Chapter I Rules;
- appeals from a final order of the Magistrates' Court on a question of law pursuant to section 92 or 109 of the *Magistrates' Court Act 1989* (Vic);
- appeals from an order of the Victorian Civil and Administrative Tribunal on a question of law pursuant to section 148 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic); and
- other proceedings of a similar nature, being proceedings in the nature of judicial review or appeals to the Trial Division of the Court on a question of law,

including applications for leave to appeal to the Court in such proceedings where required.

2.2 Examples of "other proceedings of a similar nature" include, non-exhaustively, 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* (Vic), cases stated by a tribunal or references of a question of law by a tribunal, and referrals for the determination of questions of law under section 33 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic)<sup>1</sup> by a court or tribunal.

2.3 Inclusion in the List is not appropriate for proceedings which would otherwise fall within another specialist List of the Court, such as the Victorian Taxation Appeals List or the Valuation, Compensation and Planning List.

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<sup>1</sup> Practitioners are also referred to Practice Note No 3 of 2008 – "Notification of Matters Arising Under the *Charter of Human Rights and Responsibilities Act 2006*".

2.4 All proceedings appropriate for inclusion in this List pursuant to paragraph 2.1 of this Practice Note are to be included in it. The heading of the originating process and all documents filed in the proceeding should be endorsed “In the Judicial Review and Appeals List.”

2.5 No additional fees are payable for the inclusion of proceedings in the List.

### **3. GENERAL CONDUCT OF PROCEEDINGS**

3.1 Proceedings in the List are managed by the Judges-in-Charge and the Masters-in-Charge. Management includes the adoption of one or more of the following procedures where appropriate:

- a. encouraging the parties to cooperate with each other in the conduct of the proceeding;
- b. fixing timetables and otherwise controlling the progress of the proceeding;
- c. managing the proceeding by making interlocutory orders on the papers, that is, upon written application and material without the necessity of appearance before the Court;
- d. encouraging the parties to use alternative dispute resolution procedures;
- e. encouraging and helping the parties to settle all or part of the dispute;
- f. encouraging the parties to identify and focus on the critical question or questions of law at an early stage of the proceeding; and
- g. giving directions to ensure that the matter proceeds quickly and efficiently.

3.2 The first hearing in a proceeding in the List will generally be before one of the Masters-in-Charge. This will generally deal with directions for the proceeding and the hearing of the application for leave to appeal if required. See part 4 of this Practice Note in relation to directions that may be given.

3.3 A Master-in-Charge will, in consultation with the other Master-in-Charge and the Judges-in-Charge, fix the proceeding for hearing and allocate the proceeding to one of the Judges-in-Charge or to another Judge at the earliest date practicable. That Judge

will thereafter act as the “Managing Judge” for the proceeding, and will generally hear the substantive application or appeal himself or herself.

- 3.4 After a Managing Judge has been appointed, he or she will have responsibility for managing the proceeding.
- 3.5 Communications with the Court, preferably via email, should generally be directed to the Associates to the Masters-in-Charge of the List before a Managing Judge is allocated to the proceeding, and to the Associate to the Managing Judge once that Judge has been allocated. In appropriate cases, where the parties have been informed that the Managing Judge will not be hearing the substantive application or appeal himself or herself, communications should thereafter be directed to the Associate to the Judge who will be hearing the matter. All communications with the Court should be disclosed to all parties.
- 3.6 The parties are encouraged to file and serve all material printed double-sided, pursuant to rule 27.03 of the Chapter I Rules.

#### **4. DIRECTIONS**

- 4.1 Directions may vary depending on the nature of the particular proceeding. The efficient management of the numerous and varied proceedings in the List requires flexibility.
- 4.2 In some cases, directions may be given in relation to mediation or other alternative means of resolving the dispute.
- 4.3 However, subject to any order to the contrary made in a particular proceeding, the following standard directions can be expected to be given in relation to the substantive hearing of a proceeding:
  - a. By no later than 28 days before the date fixed for hearing, Applicant/Plaintiff/Appellant to file two copies and to serve one copy of an agreed court book which conforms with paragraph 7 of this Practice Note.

- b. By no later than 28 days before the date fixed for hearing, Applicant/Plaintiff/Appellant to file and serve a detailed written outline of submissions, a draft of any proposed amendment to a document previously filed and a draft of the final orders sought, together with an indexed folder containing the principal authorities and statutory materials relied upon.
- c. By no later than 14 days before the date fixed for hearing, Defendant/Respondent to file and serve a detailed written outline of submissions in response, together with an indexed folder containing the principal authorities and statutory materials relied upon, except those already included in the Applicant/Plaintiff/Appellant's folder.
- d. By no later than 7 days before the date fixed for hearing, Applicant/Plaintiff/Appellant to file and serve a written outline of any further submissions in reply, together with an indexed folder containing the principal further authorities or statutory materials relied upon (if any).
- e. Original exhibits<sup>2</sup> to all affidavits filed to be made available to the Court at the hearing of the application/appeal.
- f. Liberty to apply generally.

## **5. APPEALS FROM DECISIONS OF MASTERS ON APPLICATIONS FOR LEAVE TO APPEAL OR FOR ORDERS NISI FOR REVIEW**

5.1 Where leave to appeal is required and a Master makes a decision on an application for leave, or where a Master makes a decision on an application<sup>3</sup> for an order nisi for review under sections 3, 4, 5 and 6 of the *Administrative Law Act 1978* (Vic), any party may, pursuant to rule 77.05<sup>4</sup> of the Chapter I Rules, appeal to a Judge from the Master's decision. The decision may have been to grant or to refuse the application or

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<sup>2</sup> Original exhibits are not to be filed. Copies of relevant exhibits are to be included in the court book pursuant to paragraph 7.3 of this Practice Note.

<sup>3</sup> Subsection 4(1) of the *Administrative Law Act 1978* (Vic) provides that such applications are to be made *ex parte*.

<sup>4</sup> The corresponding rule will be rule 77.06 when the *Supreme Court (Associate Judges Amendment) Rules 2008* (Vic) come into operation.

to grant it on particular grounds or terms. Subject to rule 77.05<sup>5</sup> and to the Rules generally, an appeal from such a decision in a matter in this List should continue to be made returnable in the Practice Court and in accordance with the time limits applicable under the rule, but ordinarily the Practice Court Judge will adjourn the appeal for management and hearing in accordance with this Practice Note, and the parties will not need to attend physically in the Practice Court unless advised to the contrary.

5.2 The Managing Judge may direct the parties that they should be prepared to argue both the appeal against the Master's decision and the substantive matter itself at a single hearing. This may be done where, on the papers, the Managing Judge considers that there is a substantial prospect that the appeal will result in a grant of leave or the grant of an order nisi (as the case may be) or where the Managing Judge otherwise considers that such a direction is appropriate.<sup>6</sup>

## **6. ORDERS**

6.1 Practitioners are encouraged to prepare draft orders for all relevant hearings in the List.

6.2 As a general rule, orders will be authenticated pursuant to rule 60.04 of the Chapter I Rules whereby the Judge or Master signs the order.

6.3 Minutes of consent orders may be submitted to the Court and may be made on the papers. Where the parties consider orders should be made on the papers, without the necessity of attendance by them, they should agree about the form of the proposed orders, and a minute of the proposed orders signed by or on behalf of all parties should be emailed to the Associate to the Managing Judge (or, if no Managing Judge has been allocated, to the Associates to the Masters-in-Charge) a reasonable time in advance of the relevant hearing. Where proposed orders would set aside the decision under review or appeal and/or would involve the remittal of any matter, a joint

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<sup>5</sup> See previous footnote.

<sup>6</sup> In addition, practitioners and parties are reminded that under rule 58.13(3) of the Chapter I Rules and rule 4.14(3) of Chapter II Rules the Court may order that an application for leave to appeal be heard and determined by the Court which, if leave is granted, is to hear and determine the appeal and may give directions accordingly.

memorandum explaining the legal justification for the proposed orders should be provided.<sup>7</sup> Emailed draft orders should be provided in Word format to expedite the authentication process.

6.4 Notwithstanding that the parties have agreed to and submitted proposed orders, the Court may require the attendance of practitioners and may not make the proposed orders. Attendance is usually required if the final disposition of the matter is sought.

## **7. COURT BOOKS**

7.1 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 application or appeal.

7.2 Practitioners will be expected to agree upon the contents of the court book.

7.3 As a general principle, the court book will include copies of all documents which a party reasonably expects will be relevant to the Court's decision. This will generally include the originating process and pleadings in the proceeding, all affidavits (including exhibits) which bear substantively upon the proceeding, key orders made in the proceeding, the official record of the decision under review or appeal (where available) or a statement of that decision, and critical documents relating to that decision, including any statement of reasons for the decision.

7.4 Parties must ensure that, as far as possible, copies of all such documents are included in the court book and that unnecessary or duplicated documents are not included. However, if it appears that a necessary document has been omitted from the court book, the acceptance of that document into evidence will not be refused for that reason.

7.5 The court book should contain copies of documents only and not original documents.

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<sup>7</sup> If an order is made on the basis of the joint memorandum, a copy of both the order and the joint memorandum will be provided to the primary decision-maker.

7.6 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.

7.7 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.

2 December 2008