



Supreme Court of Victoria Common Law Division

Practice Note No. 2 of 2016 Employment and Industrial List

1. INTRODUCTION

- 1.1 This Practice Note provides guidance on the operation of the Employment and Industrial List (*List*), a new specialist case management list within the Common Law Division of the Supreme Court of Victoria (*Court*). The procedures set out in this Practice Note will apply from 1 January 2016 to relevant proceedings commenced in the Trial Division of the Court.
- 1.2 The purpose of the List is to provide for the just and efficient determination of eligible proceedings, through early identification of the substantial questions in controversy and flexible adoption of appropriate procedures.
- 1.3 The Judge in Charge of the List (*Judge in Charge*) is Justice McDonald. His Honour is assisted by Associate Justice Ierodiaconou (*Associate Judge*).
- 1.4 References in this Practice Note to *Associate* are to be read as references to the Associate to the Judge in Charge unless otherwise indicated.

2. PROCEEDINGS SUITABLE FOR INCLUSION IN THE LIST

- 2.1 Proceedings that have a significant connection with an employment or labour relationship should be initiated in the List. Such proceedings include, but are not limited to:

- a) claims for relief based on an alleged breach of an employment or other labour contract;
- b) disputes concerning whether a worker is an employee or independent contractor;
- c) claims alleging breaches of equitable and/or fiduciary obligations arising from an employment or other labour relationship, including breach of confidence claims¹;
- d) claims alleging misleading and deceptive conduct in relation to employment;
- e) claims in connection with an employment relationship alleging interference with contractual relations, inducing breach of contract and/or conspiracy to injure;
- f) industrial tort, secondary boycott and related contempt proceedings.
- g) appeals and applications in the nature of judicial review from:
 - i. the Industrial Division of the Magistrates' Court save for decisions made in the exercise of jurisdiction under the *Fair Work Act 2009* (Cth);
 - ii. the Human Rights List of VCAT involving allegations by an employee of discrimination or harassment in the workplace;
 - iii. decisions of tribunals in relation to employment.

2.2 Where the cause of action arose in regional Victoria, or where the majority of witnesses or parties reside in regional Victoria, proceedings of the nature set out in paragraph 2.1 should be initiated in the **Civil Circuit List** (see *Practice Note No. 1 of 2015*).

2.3 For the avoidance of doubt:

- a) proceedings in which the principal claim relates to personal injuries sustained in the course of employment should be initiated in the Personal Injuries List or Dust Diseases List as appropriate; and
- b) proceedings of the nature described in paragraph 2.1(g) should be initiated in the Employment and Industrial List and not in the Judicial Review and Appeals List.

¹ Where in addition to those matters there is an allegation of a breach of s 180-183 *Corporations Act 2010* (Cth), the matter is suitable for inclusion in the List.

3. PROCEDURE FOR ENTRY INTO THE LIST

- 3.1 Proceedings should be initiated in the List by endorsing the heading of the originating process “Employment and Industrial List”. The heading of all subsequent documents filed in the proceeding should also be endorsed “Employment and Industrial List”.
- 3.2 Parties may apply to the Judge in Charge (by contacting the Associate) if they wish to have a proceeding included in the List, notwithstanding that it is not a proceeding of a type referred to in paragraph 2.1.
- 3.3 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. Without limiting the foregoing, this may occur where, by virtue of an amended claim, counter-claim or third party claim, an eligible employment or industrial claim is introduced into the proceeding.
- 3.4 Conversely, a proceeding initiated in the List may be transferred out of the List 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.
- 3.5 No additional fees will be payable for the inclusion of a proceeding in the List.

4. FIRST DIRECTIONS HEARING

- 4.1 The Associate Judge will give directions for the management of a proceeding in the List at a first directions hearing. The Court will generally notify the parties of the date and time of the first directions hearing within 14 days of the filing of the first defence. Directions hearings are held at 9.30am on the second Friday of each month during the Court sitting terms (**List Directions Day**).
- 4.2 At the first directions hearing, the Court expects that each party's representative will be properly briefed and familiar with the proceeding, and will be able to deal fully with all issues that might arise. This expectation applies equally to self-represented litigants. The practitioner with conduct of the file (or counsel, if retained to appear in the trial of the proceeding) is strongly encouraged to appear at the first directions hearing.

- 4.3 At the first directions hearing, all parties are required to attend and are expected to have considered:
- a) The nature of the claim, and the key legal and factual issues which may arise;
 - b) Whether the parties have given each other sufficient information to understand the principal questions in issue;
 - c) Their compliance with section 26 of the *Civil Procedure Act 2010*;
 - d) The likely duration and the mode of the trial;
 - e) The utility of early mediation or other form of alternative dispute resolution;
 - f) Joinder of any further parties;
 - g) Whether apportionment is sought against any party or other person;
 - h) The filing and service of any further pleadings;
 - i) The provision of proper particulars;
 - j) The scope of discovery, service of lists of documents, and the provision of copy documents;
 - k) Whether expert evidence is appropriate for the resolution of the issues in dispute and, if so, the nature and scope of any likely expert evidence;
 - l) Whether experts have been or are expected to be retained for the purposes of the proceeding, and whether a common expert might be jointly retained;
 - m) The timing for the filing and service of any evidence or affidavits; and
 - n) Whether an order should be made for the separate trial of any question.

5. INTERLOCUTORY APPLICATIONS

- 5.1 All interlocutory applications are to be made by summons, which will generally be returnable before the Associate Judge on a List directions day.
- 5.2 The following matters will not be dealt with on a List directions day before the Associate Judge and will be listed as a special fixture:
- a) Applications to strike out proceedings or for summary judgment; or
 - b) Applications with an estimate of more than two hours.
- 5.3 Prior to filing a summons, a party seeking to arrange the hearing of an application must contact the Court (Registry Applications Coordinator) to obtain a return date by completing the “Interlocutory Applications Information Form” (attached) and forwarding via email to employmentandindustrial@supremecourt.vic.gov.au. The applicant will be

advised by email of the return date. The summons should be filed within 48 hours of this advice or the return date may not be guaranteed.

- 5.4 The practitioner for the applicant must notify the Court immediately upon becoming aware that the hearing is no longer required, the application is no longer contested or has become a consent matter, or the hearing estimate has otherwise been revised.
- 5.5 In addition to the usual requirements for filing, a time estimate and a scanned copy of any materials parties intend to rely on (including a copy of any exhibits to any affidavits and an outline of submissions) should be emailed to the Associate to the Associate Judge by 1.00pm two days prior to the hearing.
- 5.6 Any applications for an interlocutory injunction or contempt should be made by summons, returnable before the Judge in Charge or the Practice Court, depending on their urgency. Parties are requested to contact the Practice Court Coordinator regarding these applications in the first instance.

6. FINAL DIRECTIONS HEARING

- 6.1 The trial judge will convene a final directions hearing, to be held shortly before the date fixed for trial.
- 6.2 At a final directions hearing, the practitioner with conduct, or counsel if retained to appear in the trial of the proceeding, should be in a position to deal with the following matters:
- a) Whether the trial is ready to proceed on the proposed commencement date;
 - b) Whether any applicable timetable is still appropriate;
 - c) Whether the estimates previously provided with respect to the length of the trial remain accurate; and
 - d) Whether a mediation or a further mediation would be likely to achieve a settlement of some or all of the questions in issue

7. COURT ORDERS

- 7.1 Solicitors for the plaintiff (or for the applicant in case of interlocutory applications) are encouraged to deliver proposed consent orders to all other parties in advance of all

hearings after the first directions hearing. The parties should email minutes of consent to employmentandindustrial@supremecourt.vic.gov.au copying orders@supremecourt.vic.gov.au, in both Word and signed PDF format, by 4.00pm two days prior to the hearing. Proposed consent orders may not be made on the papers when sent after this time.

- 7.2 The Court will make orders on the papers where appropriate. However, notwithstanding that the parties may have submitted proposed consent orders, the Court may decide not to make the proposed orders and may require the attendance of practitioners at a hearing. Parties are required to appear at all scheduled hearings unless otherwise advised by the Associate.
- 7.3 Parties should notify the Court as soon as it becomes apparent that there are difficulties in complying with orders.

8. COMMUNICATIONS WITH THE COURT

- 8.1 At all stages of the proceeding, communications with the Court in relation to matters in the list should be by email to employmentandindustrial@supremecourt.vic.gov.au with a copy to all other parties in the proceeding, and should be confined to uncontroversial matters. Additional contact details for all associates are on the Court website.

30 November 2015

Vivienne Macgillivray

Executive Associate to the Chief Justice

Interlocutory applications information form (Employment & Industrial List)



Once completed, please send this form to employmentandindustrial@supremecourt.vic.gov.au.

Hearing Return Date before the Associate Justice (Court Use Only)	
Proceeding number:	
Hearing Estimate: The solicitor for 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 the Registry Applications Coordinator on 9603 9345. (Consent minutes must be sent in an editable word format to employmentandindustrial@supremecourt.vic.gov.au or to the Associate to the Associate Judge as soon as practicable prior to the hearing).	
Summary of proceeding: Provide a short summary of the nature of proceeding in which the application is brought.	
Who is bringing the application? Party type and name of party.	
Summary of application: Provide a short summary of the application before the court. Please include reasons for urgency if the requested return date is within 5 working days of filing the application.	
Affidavit(s) relied upon Any further affidavits (including exhibits) not filed at the time of filing the application and responding affidavits should be filed with the Registry and forwarded as a soft copy attachment to employmentandindustrial@supremecourt.vic.gov.au as soon as practicable prior to the hearing.	
Rule or legislative provision under which the application is brought:	
Whether the matter Opposed / Unopposed / Ex-Parte / Consent?	
Firm name:	
Practitioner with conduct:	
Direct telephone number:	
Email address:	
Preferred hearing date/s (if any) – NB applications under 2 hours will generally be heard on List directions days on the second Friday of each month. Longer applications will be given a special fixture.	
Date and signature	