



Supreme Court of Victoria

Practice Note SC CL 3

Personal Injuries 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 provide guidance on the procedures to be followed in the Personal Injuries List, a case management list within the Common Law Division of the Court.

2 DEFINITIONS

- 2.1 In this Practice Note:
List means the Personal Injuries List.

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 Proceedings that should be initiated in the List include claims in respect of:
 - a) Industrial accidents.
 - b) Motor vehicle accidents.
 - c) Public and occupier's liability.
 - d) School accidents.
 - e) Medical negligence.
 - f) Bullying and harassment.
 - g) Sexual abuse.
 - h) Personal accident or disability insurance policies.
 - i) Recovery of payments by the Transport Accident Commission under section 104 of the *Transport Accident Act 1986 (Vic)*.
 - j) Recovery of compensation by the Victorian WorkCover Authority under section 138 of the *Accident Compensation Act 1985 (Vic)* or section 369 of the *Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)*.

- 4.2 Dependency claims arising from proceedings of the nature set out in paragraph 4.1 should also be initiated in the List.
- 4.3 Where the Plaintiff alleges that he or she is suffering from a dust disease, the proceeding should be initiated in the Dust Diseases List (see Practice Note SC CL 2 “Dust Diseases List”).
- 4.4 Save for claims in respect of a dust disease, unless the balance of convenience and interests of justice dictate otherwise, where the cause of action arose in regional Victoria, or where the majority of witnesses or parties reside in regional Victoria, the proceeding should be initiated in the Civil Circuit List (see Practice Note SC CL 1 “Civil Circuit List”).

5 PROCEDURE FOR ENTRY INTO THE LIST

- 5.1 Proceedings of the nature set out in paragraphs 4.1 and 4.2 should be initiated in the List by endorsing the heading of the originating process “Personal Injuries List”. The heading of all subsequent documents filed in the proceeding should also be endorsed “Personal Injuries 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 Court may transfer the proceeding into the List.
- 5.3 Conversely, a proceeding initiated in the List may be transferred out of the List 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 inclusion of a proceeding in the List.

6 COURT APPEARANCES

- 6.1 Non-admitted persons may appear at directions hearings but must seek leave of the Court at least one day beforehand by emailing personal.injuries@supremecourt.vic.gov.au.
- 6.2 All persons appearing at directions hearings must be fully briefed on all relevant aspects of the matter so as to be in a position to assist the Court.
- 6.3 Parties are required to appear at directions hearings unless otherwise advised by the Court, including matters in which minutes of proposed consent orders have been submitted.

7 FIRST DIRECTIONS

- 7.1 The Court will give directions for the management of a proceeding in the List at a first directions hearing. Parties will generally be notified of the date and time of the first directions hearing by the Court within seven days of the filing of the first defence.
- 7.2 At or shortly after the first directions hearing, the proceeding will be given a trial date.
- 7.3 The parties are encouraged to seek agreement concerning proposed consent orders in advance of the first directions hearing, with a view to obtaining orders by consent without the need for an appearance.
- 7.4 Requests for such orders are to be made using the *Request for Consent Orders Pursuant to Rule 59.07 First Directions* form, a link to which can be found on the

[Personal Injuries List webpage](#) of the Court's [website](#). This form contains standard first directions for matters in the List. While parties may dispense with unnecessary directions or add additional directions, they are requested not to alter the wording of standard clauses without good reason.

- 7.5 Parties should email completed *Request for Consent Orders Pursuant to Rule 59.07 First Directions* forms in both Word and signed PDF format to: personal.injuries@supremecourt.vic.gov.au (cc. orders@supremecourt.vic.gov.au) **by 4.00pm two days prior to the hearing**. Requests received after that time may not be considered in time for the Court to excuse parties from attending a directions hearing.

8 INTERLOCUTORY APPLICATIONS

- 8.1 Interlocutory applications should be made on summons and will generally be heard by an Associate Judge or Judicial Registrar at 11:30am on Fridays in the Court sitting terms.
- 8.2 Where a proposed application is expected to exceed two hours, the application may be listed as a special fixture or for directions.
- 8.3 In order to obtain a return date, a party intending to file a summons should complete the "Interlocutory Applications Information Form" available on the [List webpage](#) and forward to personal.injuries@supremecourt.vic.gov.au.
- 8.4 The Court will confirm the return date for the proposed summons via email. In order to maintain the return date the applicant should file the proposed summons and supporting affidavit within 48 hours of receipt of the Court's confirmation. The Court's confirmation should be provided to Principal Registry upon filing and served on all parties together with the summons and supporting material.
- 8.5 Exhibits should be filed with the affidavit but should not be stapled to it.
- 8.6 Any party to an application may provide a written outline of submissions, which should be filed no later than the day before the application is to be heard. An outline of submissions is not to exceed five pages in length. Outlines of submissions should be filed with the Principal Registry. If filed on the day before the hearing a copy should also be sent by email to personal.injuries@supremecourt.vic.gov.au.

9 INTERROGATORIES

- 9.1 The number of interrogatories served in proceedings in the List should be limited to thirty (including sub-parts).
- 9.2 In motor vehicle and industrial accident cases, interrogatories should be confined to questions of liability and contributory negligence.

10 POST-MEDIATION DIRECTIONS

- 10.1 Interlocutory orders will usually include an order that the parties attend a post-mediation directions hearing approximately 2-3 weeks after the date by which they have been ordered to attend mediation.

- 10.2 Attendance at the post-mediation directions hearing is compulsory and the parties will be required to advise the Court:
- a) whether the Court ordered timetable has been complied with;
 - b) what issues remain in dispute;
 - c) what, if any, interlocutory applications are contemplated, particularly to amend pleadings or join further parties;
 - d) whether the initial estimate of the length of the trial requires adjustment; and
 - e) whether the trial date can be maintained.

11 FINAL DIRECTIONS

- 11.1 Proceedings will be listed for a final directions hearing at which an appearance is compulsory by a person adequately briefed to address questions from the Bench as to the readiness of the proceeding for trial.
- 11.2 As part of final directions, parties will usually be ordered to file a joint memorandum identifying the factual and legal issues in dispute and to prepare a folder of key documents for the assistance of the trial judge. Court Books are not required.

12 COMPLIANCE WITH ORDERS & ADJOURNMENTS OF TRIAL

- 12.1 If at any time the parties are unable to comply with time limits in Court orders, they must notify personal.injuries@supremecourt.vic.gov.au and request an extension of time.
- 12.2 Applications to adjourn trial dates should be made as soon as it is known that a matter is not ready to proceed as listed and should not be left until the Final Directions Hearing. Such applications should be made on summons supported by affidavit material in accordance with section 8 of this Practice Note.

13 USE OF TECHNOLOGY

- 13.1 The provisions of Practice Note SC Gen 5 “Guidelines for the Use of Technology” apply to proceedings in the List.
- 13.2 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.

14 COMMUNICATIONS WITH THE COURT

- 14.1 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.
- 14.2 Communications should be directed to personal.injuries@supremecourt.vic.gov.au prior to the case being allocated to a Trial Judge or to the associate to the Trial Judge (once allocated). Contact details for all associates are on the Court website.

14.3 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.

15 FURTHER INFORMATION

15.1 The Court's website (www.supremecourt.vic.gov.au) includes a [page dedicated to the List](#) with up to date information about the operation of the List including:

- a) Judicial officers managing the List;
- b) this Practice Note in Word and PDF formats;
- c) Form for request for consent orders pursuant to r 59.07 referred to in paragraph 7.4;
- d) Interlocutory Applications Information Form referred to in paragraph 8.3.

AMENDMENT HISTORY

30 January 2017: This Practice Note was issued on 30 January 2017 and replaced Practice Note No 9 of 2016 and *Notice to the Profession – Interlocutory Applications in the Personal Injuries and Dust Diseases Lists*.

Vivienne Macgillivray
Executive Associate to the Chief Justice
30 January 2017