



Supreme Court of Victoria

Common Law Division

Practice Note No. 4 of 2015

Major Torts List

1. INTRODUCTION

- 1.1 This Practice Note replaces *Practice Note No. 1 of 2012*, and provides updated guidance on the operation of the Major Torts List (*List*), a 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 2015 to relevant proceedings commenced in the Trial Division of the Court.
- 1.2 The List is designed to facilitate and expedite the passage of significant tortious claims to trial.
- 1.3 The Judge in Charge of the List (*Judge in Charge*) is Justice Dixon. His Honour is assisted by Associate Justice Zammit.
- 1.4 References in this Practice Note to *Associate* are to be read as references to the Associate to the Judge in Charge.

2. PROCEEDINGS SUITABLE FOR INCLUSION IN THE LIST

- 2.1 Large, complex or otherwise significant tortious claims should be initiated in the List.
- 2.2 All defamation proceedings should be initiated in the List.
- 2.3 Without limiting the generality of paragraph 2.1, the following proceedings should be initiated in the List:
- a) Personal injury proceedings involving a plaintiff who is alleged to have suffered catastrophic personal injuries (other personal injury proceedings are managed in the **Personal Injuries List** – see *Practice Note No. 3 of 2015*);
 - b) Complex personal injury proceedings involving three or more defendants or third parties;
 - c) Complex tortious claims for economic loss or property damage involving multiple claims, or three or more defendants or third parties;
 - d) Complex tortious claims that involve multiple plaintiffs;
 - e) Class actions where the predominant cause of action is based in tort; and
 - f) Tortious claims of significant public interest.
- 2.4 Associated proceedings that derive from proceedings of the nature set out in paragraph 2.1 should also be initiated in the List, where the primary proceeding is managed in the List. For example, a proceeding brought by the Transport Accident Commission under section 104 of the *Transport Accident Act 1986* or by the Victorian Workcover Authority under section 138 of the *Accident Compensation Act 1985*.
- 2.5 However, 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 paragraphs 2.1 to 2.4 should be initiated in the **Civil Circuit List** (see *Practice Note No. 1 of 2015*).

3. PROCEDURE FOR ENTRY INTO THE LIST

- 3.1 Proceedings of the nature set out in paragraphs 2.1 to 2.4 should be initiated in the List by endorsing the heading of the originating process “Major Torts List”. The heading of all subsequent documents filed in the proceeding should also be endorsed “Major Torts List”.
- 3.2 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.
- 3.3 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.
- 3.4 No additional fees will be payable for the inclusion of a proceeding in the List.

4. DIRECTIONS HEARINGS

- 4.1 Directions hearings in proceedings in the List are heard before the Judge in Charge at 9.30am on Fridays (usually fortnightly) during the Court sitting terms (*List directions day*). The specific dates are on the Court website.
- 4.2 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.¹
- 4.3 The plaintiff’s solicitors are encouraged to deliver proposed consent orders to all other parties in advance of all directions hearings, with a view to obtaining orders by consent without the need for an appearance. The parties should email minutes of consent to the Associate by 1.00pm two days prior to the directions hearing. Any proposed orders should be drawn from the template

¹ It is no longer necessary to issue a summons for admission to the List or for a first directions hearing.

orders set out in **Schedule 1**, adapted as appropriate, and should be submitted in both Word and signed PDF format:

- a) At a first directions hearing, the Court would normally deal with directions involving pleadings, particulars, discovery and interrogatories;
- b) At a second directions hearing, the Court would ordinarily make directions for the preparation of expert evidence and for mediation, and set the proceeding down for trial with trial preparation and conduct directions; and
- c) A final directions hearing will be held shortly prior to the trial date to confirm that the proceeding is ready for trial, to confirm the sitting day estimate, and for any further trial conduct directions to be made.

4.4 Parties are reminded that, pursuant to section 65G of the *Civil Procedure Act 2010*, directions must be sought from the Court as soon as practicable by a party that intends to adduce expert evidence at trial, or becomes aware that they may adduce expert evidence at trial.

4.5 All parties are required to appear at scheduled directions hearings unless otherwise advised by the Associate. If an appearance is required, an indication of the matters that are likely to be in issue, a time estimate, and a scanned copy of any material parties intend to rely on should be emailed to the Associate by 1.00pm on the day prior to the directions hearing.

4.6 Parties are required to make arrangements for the provision of transcript of all directions hearings.

5. INTERLOCUTORY APPLICATIONS

5.1 All interlocutory applications are to be made by summons, returnable before the Judge in Charge on a List directions day.

5.2 A time estimate and a scanned copy of any material parties intend to rely on (including any exhibits to affidavits and an outline of submissions) should be emailed to the Associate by 1.00pm on the day prior to the hearing.

5.3 Depending on the complexity and time estimate of any application, it may be adjourned for a special fixture or referred to an associate judge for hearing.

6. INTERROGATORIES

6.1 Without the leave of the Court, the number of interrogatories served in proceedings in the List should be limited to thirty (including sub-parts).

6.2 In motor vehicle accident and industrial accident cases, interrogatories should be confined to questions of liability.

7. COMMUNICATIONS WITH THE COURT

7.1 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. Contact details for the Associate are on the Court website.

Vivienne Macgillivray
Executive Associate to the Chief Justice
5 November 2014

SCHEDULE 1
Major Torts List
Template orders for directions on the papers

First Directions Interlocutory steps

1. By [], the Defendant shall file and serve its defence [or other pleadings as appropriate].
2. By [], each party shall file and serve on all other parties an affidavit of documents.
3. By [], all parties shall complete inspection of documents.
4. By [], the parties shall issue any subpoena under Order 42A.
5. By [], all parties shall file and serve any interrogatories for the examination of any other party.
6. By [], any party interrogated shall file and serve answers to interrogatories. The answers are to be served on all other parties.
7. By [], all parties shall comply with Order 33 in relation to medical reports [and Order 44 in relation to expert reports] and all reports are to be served on all other parties.
8. By [], the Plaintiff shall deliver a list particularising any special damages, loss of earnings and loss of earning capacity claimed by the Plaintiff.

Alternative dispute resolution

9. The proceeding is referred to a Mediator to be agreed between the parties or, in default of agreement, to be appointed by the Court, such mediation to be completed before [], by which date the Mediator shall report to the court and to the associate to the managing judge about the completion of the mediation.
10. The solicitors for the Plaintiff shall, after such consultation, deliver to the Mediator a copy of this order, all pleadings (including further particulars) and a copy of any other relevant information as agreed, and take all steps necessary to ensure that the mediation commences as soon as practicable.
11. Those persons who have the ultimate responsibility for deciding whether to settle the dispute and the terms of any settlement, and the legal representatives who have ultimate responsibility to advise the parties in relation to the dispute and its settlement shall attend the mediation.

12. Subject to any further order, the costs of the mediation shall be paid in the first instance by the parties in equal shares.
13. The parties must forthwith notify the Associate to the Honourable Associate Justice Daly in the event of the proceeding being resolved before the date fixed for the trial.

Expert Evidence

14. At the first available opportunity, the parties should inform the Court that a party intends to or may adduce expert evidence at trial.²
15. By [], the expert witnesses to give evidence at the trial shall jointly confer in conclaves of experts of like specialisation.
16. In addition to the matters previously addressed by the experts in their respective reports filed in the proceeding, the experts must address the following matters in their conference:
 - a. Expert group A: [Insert any additional questions agreed between the parties, as appropriate].
 - b. Expert group B: [Insert any additional questions agreed between the parties, as appropriate].
17. The experts (not the parties or their legal representatives) are to determine the venue and procedure to be adopted at the conference. In the event that agreement cannot be reached about any matter relevant to the conference or joint report to the court, further directions may be sought from the Court.
18. The parties and their legal representatives must not seek to restrict the freedom of the experts at the conference in identifying the matters on which they agree.
19. Following the conference, the experts shall prepare a succinct joint written report for the Court, recording:
 - a. The fact that they have met and discussed the matters on which they are directed to confer;

² A notation in 'other matters' in an order on the papers will be appropriate where the pleadings have not closed, or before discovery.

- b. The matters on which they agree;
 - c. The matters on which they disagree; and
 - d. A brief summary of the reasons for disagreement.
20. Each expert attending a conference is to be provided with a copy of this order and the reports of the experts with whom they will confer.
21. Each expert must affix their respective signatures to the report, and the report must be provided to the Court and the parties on or before [].
22. The experts attending each conference will give evidence at the trial concurrently.
23. Subject to any further order, the costs of the conferences, including any administrative expenses incurred, shall be, in the first instance, borne equally by the parties.

Trial date

24. The proceeding is fixed for trial [by jury] on [] based on the parties' estimate of [] sitting days.
25. The Plaintiff shall pay the setting down for trial fee no later than 30 days prior to the trial date.
26. [The Defendant shall pay the first day jury fee no later than 30 days prior to the trial date.]

Trial Directions

27. By [], the parties shall each file and serve a list of the witnesses they intend to call during the trial of this proceeding.
28. By [], the legal representatives for the parties shall have met, or otherwise communicated about, and agreed on the contents of a Court Book for the trial of this proceeding.
29. The Plaintiff shall prepare a paginated Court Book containing the following documents:
- a. The current (only) pleadings including particulars;

- b. Statements under Order 33 or Order 44 to be relied on at trial;
 - c. All documents, in date order, which any party expects to tender in opening, in evidence in chief, or through cross examination; and
 - d. An index of the contents in e-format (Excel).
30. By [], the Plaintiff shall deliver a copy of the agreed Court Book to each Defendant and each Third Party.
31. The Plaintiff shall have available, prior to opening their case, two copies of the Court Book for the use of the Court and the witnesses.

Other matters

32. The proceeding is adjourned to [] for directions.³
33. In the event of default by either party in compliance with any time limit imposed by these orders:
- a) The parties shall forthwith following that default use their best endeavours to agree a substitute appropriate time limit that avoids any delay in preparation of this proceeding for trial; and
 - b) [Where a trial date is set] Any application to vacate the trial date must be made promptly to the Honourable Associate Justice Daly and, in any event, not later than 30 days before the date on which the proceeding is fixed for trial.
34. [Costs are reserved.] / [The costs of the parties be costs in the proceeding].
35. Liberty to apply is reserved.

³ A proceeding in the List must be adjourned to a further directions hearing until the final directions hearing confirming readiness for trial.