



Supreme Court of Victoria

Practice Note No.3 of 2008

NOTIFICATION OF MATTERS ARISING UNDER THE *CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006*

The Chief Justice has authorised the issue of the following Practice Note.

Section 35 of the *Charter of Human Rights and Responsibilities Act 2006* (the Charter) provides that:

- (1) A party to a proceeding must give notice in the prescribed form to the Attorney-General and the Commission if—
 - (a) in the case of a Supreme Court or County Court proceeding, a question of law arises that relates to the application of this Charter or a question arises with respect to the interpretation of a statutory provision in accordance with this Charter; or
 - (b) in any case, a question is referred to the Supreme Court under section 33.
- (2) For the purpose of subsection (1), a notice is not required to be given to—
 - (a) the Attorney-General if the State is a party to the relevant proceeding; or
 - (b) the Commission if the Commission is a party to the relevant proceeding.

The form of notice to be given is prescribed by the *Charter of Human Rights and Responsibilities (General) Regulations 2007*. A copy is annexed to this Practice Note.*

Neither the Charter nor the Regulations set out specific requirements as to when notice is to be given or when the Attorney-General and the Commission are to indicate whether they intend to intervene in a proceeding.

The Court is concerned to ensure that, where required, parties comply with section 35 at the earliest opportunity to avoid delays and the wastage of costs which could occur as a result of late compliance. The Court's expectations of practitioners in this regard are set out below.

Whether service of a notice in close proximity to a hearing or trial necessitates an adjournment will be a matter for the Judge or Master hearing the proceeding. Parties should be aware however that the Attorney-General and the Commission have indicated that in the ordinary course 14 days is the expected response time. Meeting that response time will be assisted if practitioners provide copies of the relevant court documents together with the notice.

The Court is also concerned to ensure that it and other parties to proceedings are informed in a timely fashion of Charter issues arising in a proceeding. In this regard, practitioners are expected to file the section 35 notice, and serve it on all other parties to the proceeding on the same day as it is served on the Attorney-General and the Commission.

Compliance with the requirements of this Practice Note will be taken into account, where relevant, in relation to the question of costs.

Practitioners are reminded that referrals of Charter questions to the Supreme Court under s 33 are to be made in accordance with Order 23 of the *Supreme Court (Miscellaneous Civil Proceeding) Rules 1998*.

Commencement of proceedings

Practitioners are expected to assess at the commencement of a proceeding, or upon receiving instructions to act for a party to a proceeding, whether notice pursuant to section 35 is required.

If notice is required in relation to an appeal proceeding, notice is to be given whether or not a notice has previously been given in relation to the proceedings below.

Practitioners are expected to be in a position to inform the Court at the first directions, section 5 hearing or mention:

- whether notice is required;
- if notice is required, whether notice has been given or when it is intended that notice be given; and

* Note that where notice is given in relation to a proceeding in the County Court, there is no need for a copy to be filed in the Supreme Court, despite indications to the contrary in the form.

- if notice has been given, whether any response has been received from the Attorney-General or the Commission.

Issues arising prior to trial

In the event that an issue requiring notice emerges at a later stage of proceedings, parties are expected:

- to comply with section 35 without delay and no later than 7 days after the issue comes to their attention;
- to inform the Court immediately of that fact by contacting the associate to the Judge or Master managing the proceeding; and
- if necessary for the management of the proceeding, to apply for directions, particularly where the issuing of the notice may require the adjournment of dates fixed for hearing or trial.

Urgent matters

In the event that a section 35 notice is required in relation to an urgent application, parties are to comply with section 35 at the earliest opportunity and to communicate the urgent nature of the application to the Attorney-General and the Commission.

The Court expects that the Attorney-General and the Commission will have regard to the urgency of the application and communicate their intentions as soon as possible to the Court and the parties.

Matters where the State is a party to proceedings

Section 35(2)(a) provides that notice need not be given to the Attorney-General if the State is a party to proceedings. Since the Attorney-General may decide to intervene (under section 34) in a proceeding to which the State is already a party, it may be prudent nevertheless to inform the Attorney-General at an early stage of such a proceeding if a question arises which would ordinarily require the giving of a notice under section 35. This will reduce the risk of delay resulting from a late intervention.

Vivienne Macgillivray

Executive Associate to the Chief Justice

18 August 2008

FORM 1

Regulation 5

NOTICE TO THE ATTORNEY-GENERAL/THE VICTORIAN EQUAL OPPORTUNITY AND HUMAN RIGHTS COMMISSION

1. The *[party who raises the question]* gives notice that—
 - *in the case of *[insert the names of parties and Supreme Court Proceeding No./County Court Proceeding No.]*;
 - *a question of law arises that relates to the application of the Charter of Human Rights and Responsibilities;
 - *a question arises with respect to the interpretation of a statutory provision in accordance with the Charter of Human Rights and Responsibilities;
 - *in the case of *[insert the names of parties and the relevant Proceeding No. from which the referral is made]* a question has been referred to the Supreme Court under section 33 of the Charter of Human Rights and Responsibilities being *[Court of Appeal/Trial Division]* Proceeding No. *[insert]*.
2. *[State specifically—*
 - (a) *the question of law that relates to the application of the Charter of Human Rights and Responsibilities; or*
 - (b) *the question with respect to the interpretation of a statutory provision in accordance with the Charter of Human Rights and Responsibilities; or*
 - (c) *in the case of a question referred to the Supreme Court under section 33 of the Charter of Human Rights and Responsibilities, the question referred].*
3. *[State the facts showing the matter is one to which—*
 - (a) *a question of law arises that relates to the application of the Charter of Human Rights and Responsibilities; or*
 - (b) *a question arises with respect to the interpretation of a statutory provision in accordance with the Charter of Human Rights and Responsibilities.]*
4. *[State the relevant directions, if any, made by the Court in relation to the proceeding and provide details of the next directions/hearing date.]*

Dated:

[Signed]

To the: *[Attorney-General/Victorian Equal Opportunity and Human Rights Commission*]*

And to the: *[Prothonotary of the Supreme Court/Registrar of the Court of Appeal]*

And to: *[insert details of other party/parties]*

**[delete as appropriate]*