



Supreme Court of Victoria

Practice Note SC Gen 14

Notification of Matters under the *Charter of Human Rights and Responsibilities Act 2006*

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 set out practices and expectations of parties in relation to notices to be provided under s 35 of the Charter.

2. COMMENCEMENT

- 2.1 This Practice Note was issued on 30 January 2017 and commences on 30 January 2017.

3. DEFINITIONS

- 3.1 In this Practice Note:
the Charter means the *Charter of Human Rights and Responsibilities Act 2006*
the Commission means the Victorian Equal Opportunity and Human Rights Commission

4. THE REQUIREMENT TO GIVE NOTICE

- 4.1 Section 35 of 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.
- 4.2 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.
- 4.3 While notice need not be given to the Attorney-General if the State is a party to proceedings, as the Attorney-General may decide to intervene (under s 34) in a proceeding to which the State is already a party, it is considered advisable for parties to inform the Attorney-General in any event to reduce the risk of delay resulting from a late intervention.
- 4.4 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.
- 4.5 The Court is concerned to ensure that, where required, parties comply with the notice requirement 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.
- 4.6 Whether service of a notice in close proximity to a hearing or trial necessitates an adjournment will be a matter for the presiding judicial officer. The Attorney-General and the Commission have indicated that in the ordinary course (non-urgent matters) 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.
- 4.7 The Court is also concerned to ensure that it and 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 s 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.
- 4.8 Compliance with the requirements of this Practice Note will be taken into account, where relevant, in relation to the question of costs.

5. COMMENCEMENT OF PROCEEDINGS

- 5.1 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 s 35 is required.
- 5.2 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.
- 5.3 Practitioners are expected to be in a position to inform the Court at the first directions 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

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

6. ISSUES ARISING AFTER COMMENCEMENT PRIOR TO TRIAL

6.1 In the event that an issue emerges at a later stage of proceedings that requires notice to be given under s 35, parties are expected:

- to inform the Court immediately of that fact by contacting the associate to the judge, associate judge or judicial registrar managing the proceeding; and
- to comply with s 35 without delay and no later than seven days after the issue comes to their attention;
- 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.

7. URGENT MATTERS

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

7.2 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.

AMENDMENT HISTORY

30 January 2017: This Practice Note was issued on 30 January 2017 and replaced Practice Note No 3 of 2008.

Vivienne Macgillivray

Executive Associate to the Chief Justice

30 January 2017

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]*