



## PRACTICE NOTE SC CL 5

### Supreme Court Common Law Division – General Case Management List

#### Commencement

1. This Practice Note commences on 8 May 2018.

#### Application

2. This Practice Note applies to **Urgent Applications** in civil proceedings in the Common Law Division of the Supreme Court.
3. This Practice Note should be read in conjunction with other Common Law Division Practice Notes and specifically those of the individual lists.

#### Definitions

4. In this Practice Note:

**Registrar** means the Registrar (Common Law Case Management)

**Duty Judge** means the Judge appointed from time to time to be the Judge of the Common Law Duty List

**Duty Registrar** means a Registrar appointed by the Prothonotary to consider applications by parties and provide procedural advice and assistance to both practitioners and litigants in chambers on Level 5 of the Supreme Court.

**List Judge** means the judge appointed by the Chief Justice to be the List Judge for the Common Law Division.

**UCPR** means the *Uniform Civil Procedure Rules 2005*

#### Introduction

5. The purpose of this Practice Note is to outline the practice and procedure to be adopted in respect of Urgent Applications in the Common Law Division.
6. Reference should also be made to the Common Law Division Practice Note SC CL 6 for the Possession List and particularly paragraphs 29 to 36.

#### Urgent Applications

7. A Duty Judge is available to deal with urgent applications. Some urgent applications may be dealt with by a Duty Registrar, an Associate Judge or another Judge.
8. Urgent applications in existing proceedings should be made by Motion, supported by an affidavit.

9. Other than in exceptional circumstances, urgent applications may not be made by telephone.
10. Urgent applications that are made in ordinary business hours must be reviewed by the rostered Duty Registrar before they are filed and before the Duty Judge is approached. The rostered Duty Registrar is available on Level 5 of the Supreme Court building between 9:30 AM and 4:30 PM Monday to Friday (excluding Public Holidays). Telephone calls seeking to make an urgent application during normal business hours will be referred to the rostered Duty Registrar to review and make appropriate directions.
11. The rostered Duty Registrar may direct that relevant documents be filed and any fees paid before the matter is referred to a Judge.
12. If the rostered Duty Registrar or the Duty Judge considers that the application is not urgent, it may be listed later before the Registrar or a Judge.
13. Only if exceptional circumstances arise which require an urgent application to be made outside ordinary hours, may the application be made directly to the Duty Judge. Such an application must be made by contacting the Judge's Associate through the Security Officer of the Supreme Court of New South Wales on the out-of-hours number published on the Court's website.
14. Parties who contact the Duty Judge's Associate directly in other circumstances will be referred to the Duty Registrar.
15. Parties who directly attend before the Duty Judge in Court will be referred to the Duty Registrar.
16. The Duty Registrar will consider whether the application concerns existing proceedings; whether the application is urgent and ready to proceed; whether it can be dealt with by the Duty Registrar; or whether it must be referred to the Duty Judge or the List Judge.
17. Matters dealt with by the Duty Judge will not usually be listed further in the Duty list, if they will take more than two hours to hear. In that event they will be referred to the List Judge or Registrar for allocation of a hearing date.
18. Urgent applications for stays of writs in the Possession List will be dealt with as provided in the Possession List Practice Note.
19. Urgent applications for Freezing Orders (also known as "Mareva Orders" or "Asset Preservation Orders") must be made in accordance with Practice Note SC Gen 14 - Freezing Orders.

### **Injunctive Relief**

20. Where applications for urgent injunctive relief are made, the Court expects the moving party to have sought agreement as to undertakings from the defendant(s) prior to making the application and unless special circumstances exist, to have notified the defendant(s) of the application.
21. If the parties agree that the case warrants an urgent final hearing and are in a position to agree on an interim injunctive regime until the matter is determined, they should be ready to inform the Court of: an accurate estimate of the timeframe within which the matter will be ready for hearing; an accurate estimate of the time for the trial; and available dates for their respective counsel.



**T F BATHURST AC**

Chief Justice of New South Wales

8 May 2018

**Related Information:**

Practice Note SC Gen 1 Supreme Court – Application of Practice Notes

Practice Note SC Gen 6 Supreme Court – Mediation

Practice Note SC Gen 14 Supreme Court – Freezing Orders (also known as ‘Mareva orders’ or ‘asset preservation orders’)

*Civil Procedure Act 2005*

*Uniform Civil Procedure Rules 2005*

**Amendment History:**

8 May 2018: This Practice Note replaces former Practice Note SC CL 5 which was issued on 5 December 2006.

5 December 2006: Practice Note SC CL 5 was issued on 5 December 2006 and commenced on 29 January 2007.

17 August 2005: Practice Note SC CL 5 was issued on 17 August 2005 and replaced former Practice Note No.128.

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### Annexure A

- (a) Expert evidence to be given concurrently, if not already ordered.
- (b) Orders for Experts in their respective areas of expertise to confer and engage in a conclave by a specific date and provide a Joint report on matters agreed or disagreed setting out the reasons for their disagreement by a Court ordered date.
- (c) Where evidence is to be given by way of affidavit or witness statement, the parties are to discuss and as far as possible agree on any objections to the affidavits or statements. A schedule of any disputed objections is to be filed no later than seven working days before the hearing. The Trial Judge will rule on any remaining objections.
- (d) The parties are to file and serve a final joint Memorandum of Issues and facts which are agreed and those which are disputed together with a Chronology signed by Counsel by no later than 10 working days before the hearing.
- (e) The parties are to file and serve Affidavits as to Readiness for Hearing by a prescribed date.
- (f) The parties are to file and serve written submissions by no later the seven working days before the hearing.
- (g) The parties to file a Joint Court Book by no later than three working days before the hearing.

#### **Additional Standard directions for Personal Injury Matters listed for hearing**

- (h) The plaintiff is to serve at least four weeks prior to the hearing a draft schedule of damages, outlining in detail the heads of damage, and what damages are likely to be in the event of liability being established.
- (i) Prior to the hearing the parties are to confer about the schedule of damages. The plaintiff must also file and serve the final schedule of damages showing what is agreed and, if not, the competing position of the parties at least two working days before the hearing.