



## **SUPREME COURT PRACTICE NOTE SC EQ 01**

### **Supreme Court Equity Division – Case Management in the Equity General List**

#### **Commencement**

1. This Practice Note was issued on 28 June 2023 and commences on 1 July 2023. It replaces the previous Practice Note issued on 16 June 2023.

#### **Application**

2. This Practice Note, in conjunction with the Supreme Court Equity Division Online Court Protocol Practice Note SC Eq 14, applies to all cases in the Equity Division General List that are case managed by the Registrar in Equity.

#### **Role of the Registrar in Case Management**

3. The Registrar in Equity will manage the cases in the General List with the aim of ensuring the just, quick and cheap resolution of the real issues between the parties.
4. The Registrar in Equity case manages proceedings each day using the Online Court in accordance with the Supreme Court Equity Division Online Court Protocol Practice Note SC Eq 14. If the Registrar in Equity determines that certain matters are to be heard in open court, the times for the commencement of such directions hearings and/or special fixtures and the Court location may change and Practitioners and parties should always check the daily Court Lists prior to attendance at Court.

#### **The Role of Practitioners in Case Management**

5. The Court's expectations of Practitioners appearing before the Registrar in Equity, whether the matter is in the Online Court or in open court include that:
  - 5.1 they have advised their clients of the effect of the provisions of sections 56 to 61 inclusive of the *Civil Procedure Act 2005* (the **CPA**);

- 5.2 they will carefully review the case for the purpose of informing the Court as early as practicable of: a suitable date for mediation; the suitability of reference out of all or some of the issues; and/or for the use of a single expert; or a Court Appointed Expert; or the use of an appropriate concurrent evidence process;
- 5.3 they will assist the Court to prepare the case for hearing by putting in place a timetable that will take the matter up to a date for hearing with the aim of having as few directions hearings as possible;
- 5.4 agreement will be reached between the parties on a timetable for the preparation of matters for trial and/or reference and/or mediation and Consent Orders. Evidence of this agreed timetable will be transmitted to the Registrar using the Online Court by no later than 2.30pm on the second day preceding the Online Court sitting;
- 5.5 if a party does not or cannot comply with a timetable the parties will seek to agree to a proposed amendment of that timetable and will submit a proposed Consent Order to the Registrar using the Online Court. Request to amend timetables must be made at the time the breach occurs. The parties must provide an explanation for the delay by way of affidavit and must be able to satisfy the Registrar that the matter will be able to progress in accordance with the obligations imposed upon them by the CPA;
- 5.6 trial counsel will be briefed as early as possible and consultation will occur between respective counsel and/or solicitors to ensure accurate estimates for trial are given when the matter is set down for hearing;
- 5.7 at the time the matter is set down for hearing, parties will be expected to give full trial details to ensure that the trial estimate is accurate;
- 5.8 if a hearing is likely to be longer than five (5) days the date will be set in consultation with the Chief Judge in Equity;
- 5.9 to ensure the trial estimate remains accurate, the direction at Annexure B will be made when the matter is set down for hearing;
- 5.10 if the parties have not attempted to resolve the dispute through mediation or other appropriate ADR methods they should expect a mediation date to be allocated prior to or when a matter is set down for hearing; and
- 5.11 there will be sensible co-operation between the Practitioners for the respective parties in preparing the Court Book, referred to in the Usual Order for Hearing in Annexure A to this Practice Note, so that agreement is reached on the most efficient and cost-effective method of preparing it.

## **Self-Represented Parties**

6. Any party appearing before the Registrar without legal representation must make themselves aware of the provisions of sections 56 to 61 inclusive of the *Civil Procedure Act 2005* and comply with this Practice Note.

## **Affidavits**

7. Affidavits in the main case are not filed with the Court until final hearing. Provision should be made in the timetables for service (not filing) of those affidavits. Affidavits in support of Notices of Motion are filed with the Court and provision should be made in the timetables for the filing and service of those affidavits.

## **Expert Evidence**

8. In any case where expert assistance to the Court will be necessary for the determination of the real issues in dispute the parties are to provide to the Registrar a Consent Order setting out agreement that leave to call expert evidence should be granted and including:
  - 8.1 the issue(s) in respect of which the Court will need expert assistance;
  - 8.2 the name(s) of and field of expertise of any proposed witness(es) who is (are) to assist the Court;
  - 8.3 the questions to be answered or the issues to be addressed by the expert(s);
  - 8.4 a timetable for the preparation of the expert report(s) including, if there is more than one expert in a particular field, the date by which the experts are to meet and the date for the provision to the parties of the joint report; and
  - 8.5 a note as to whether the case is suitable for the expert assistance to be provided in concurrent session.
9. If there is a dispute about whether expert assistance to the Court is required for the determination of the real issues in dispute and/or whether leave to call expert evidence should be granted, the Registrar will refer the dispute to the Chief Judge in Equity or another judge of the Division nominated by the Chief Judge.

## **Court Annexed Mediation**

10. If the Court makes an order referring a matter to Court Annexed Mediation and a mediation date is not set at the time the referral is made it is expected that the parties will attend upon the Registrar in Equity using the Online Court or if the matter is not in the Online Court at the address provided on the “Contact Us” page of the Court’s website within 24 hours of the order being made to obtain a date for the mediation.

## **Consent Orders**

11. To facilitate the just, quick and cheap resolution of matters, Consent Orders will be made by the Registrar in the Online Court. Communication with the Registrar concerning case management is to occur using the Online Court, emails will not be accepted.
12. The following protocols should be observed when communicating with the Registrar:
  - 12.1 If you are asking the Court to make orders or directions the request must indicate if the orders are consented to or opposed.
  - 12.2 If you are seeking to extend or amend a current timetable an explanation for the changes and the reason for the delays must be provided.
  - 12.3 The text of any orders the parties are seeking must be fully set out in the Online Court request.

## **Failure to Comply with Timeframes**

13. Failing to submit requests or consent orders in the Online Court in accordance with the timeframes described in this Practice Note or in the Online Court Protocol Practice Note will be treated as a non-appearance in the proceedings. The Registrar will issue a notice pursuant to rule 13.6 of the UCPR that any further non-appearance may result in the proceedings being dismissed.

## **Interlocutory applications**

14. Interlocutory applications are not encouraged. It is expected that the parties will make every effort to resolve any interlocutory issues.
15. If it is necessary to bring an interlocutory application, the Notice of Motion will be returnable before the Registrar in Equity in the Online Court.
16. At the first return date the Registrar in Equity will make directions in the Online Court for the preparation of the application for hearing.
17. When the Registrar in Equity considers it appropriate, the application will be listed for:
  - 17.1 hearing in the Applications List;
  - 17.2 specially fixed before a Registrar; and
  - 17.3 specially fixed before a Judge.
18. It is expected that the legal representatives who are to appear at the hearing of the application will provide a realistic and considered estimate of the time for the hearing of the application.

19. Any application that is to be listed for hearing in the Applications List will generally be allocated a date on a Friday before the Applications List Judge.
20. For interlocutory applications, the Court will generally make the usual order for hearing at Annexure C.

### **Usual Order for Hearing**

21. When the matter is set down for hearing the Registrar will make the Usual Order for Hearing contained in Annexure A to this Practice Note. If for any reason the parties are of the view that the Usual Order for Hearing should be modified, they must provide a Consent Modified Order for Hearing on the day the matter is set down for hearing.
22. If it is not possible to agree on a Consent Modified Order for Hearing, application should be made to the Registrar to modify the Usual Order for Hearing in the form of a draft order to be provided to the Registrar together with the detail of the basis for such modification.
23. Notwithstanding the making of the Usual (or Modified) Order for Hearing, the Trial Judge may notify the parties that a pre-trial direction will be held prior to the hearing date.

### **“Slippage”**

24. If there is a failure to comply with any of the orders in the Usual (or Modified) Order for Hearing, the parties must, via the Online Court, notify the Registrar (or the Trial Judge) and put negotiated Consent Orders before the Registrar (or the Trial Judge) to adjust the timetable to ensure the hearing date is not jeopardised.

### **The Hon. A S Bell**

Chief Justice of New South Wales  
29 June 2023

### **Related information:**

See also:

Supreme Court Practice Note SC Eq 14 – Online Court Protocol

Supreme Court Practice Note SC Eq 8 – Urgent Matters in the Equity Division

Supreme Court Practice Note SC Eq 5 - Expert Evidence in the Equity Division

*Civil Procedure Act 2005*

## **Amendment history**

29 June 2023: This Practice Note replaces the previous version of SC Eq 1 that was issued on 16 June 2023.

16 June 2023: This Practice Note replaces the previous version of SC Eq 1 that was issued on 31 August 2018.

31 August 2018: This Practice Note replaces the previous version of SC Eq 1 that was issued on 1 December 2016.

1 December 2016: This Practice Note replaces the previous version of SC Eq 1 that was issued on 26 July 2011.

26 July 2011: This Practice Note replaces the previous version of SC Eq 1 that was issued on 14 October 2009.

14 October 2009: This Practice Note replaces the previous version of SC Eq 1 that was issued on 17 August 2005.

## **ANNEXURE A**

### **Usual Order for Hearing**

1. Unless the Court otherwise orders, the Court Book need not be electronic. If the Court Book is to be electronic, Practice Note SC Gen 7 will apply. The Trial Judge may also request a hard copy in any event. The Court may order that the sections of the Court Book described below comprise of separate PDF bundles, each separately paginated and each bookmarked.
2. By no later than five (5) working days before the trial date, the parties are to provide to the Associate to the Trial Judge, two copies of a Court Book which is to contain, in separate sections:
  - (a) latest process and pleadings;
  - (b) affidavits (excluding annexures and exhibits which consist of primary documentation);
  - (c) documentary evidence – which is to be placed in chronological sequence so far as is practicable and consecutively numbered (without tabs unless the Court otherwise directs). If there are a significant number of emails, the chains should be dismembered and placed in chronological sequence; and
  - (d) expert evidence.
3. A physical Court Book must be in working ring-binder folders, none of which is to be filled beyond its reasonable working capacity, and the documents are to be accurately hole-punched.
4. The affidavits are to be annotated to the Court Book so that documents referred to, annexed or exhibited to an affidavit must be referenced to the place where the document is in the chronological section of the Court Book.

5. Not more than one index should be provided.
6. By no later than two (2) working days before the trial date, the parties must provide to the Associate to the Trial Judge a short outline of submissions, a chronology of relevant events, any objections to evidence that are essential and a list of authorities.

## **ANNEXURE B**

### **DIRECTION REGARDING TRIAL ESTIMATES**

1. It is noted that the matter has been set down for hearing on an estimate for trial of XXXX days.
2. The legal representatives must monitor the estimate for trial.
3. If the estimate for trial changes, the legal representatives must notify the Trial Judge within 48 hours of becoming aware of that change.

## **ANNEXURE C**

### **Usual Order for Hearing for Interlocutory Applications**

By no later than 48 hours before the hearing date, the parties are to provide to the Associate to the Judge allocated to hear the matter, a Court Book which is to contain, in separate sections, but consecutively paginated:

- (a) the motions;
- (b) the affidavits; and
- (c) submissions and any objections that are essential.