



## SUPREME COURT PRACTICE NOTE SC EQ 1

### SUPREME COURT EQUITY DIVISION – CASE MANAGEMENT IN THE EQUITY GENERAL LIST

#### Commencement

1. This Practice Note was issued on 1 December 2016 and commences on 1 December 2016.

#### Application

2. This Practice Note 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 at 9:30 AM. The times for the commencement of directions 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 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*;
  - 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 on a timetable for the preparation of matters for trial and/or reference and/or mediation and Consent Orders will be handed up during the directions hearing or sent via email to the Registrar prior to the directions date;
- 5.5. 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;
- 5.6. 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;
- 5.7. to ensure the trial estimate remains accurate, the direction at Annexure B will be made when the matter is set down for hearing;
- 5.8. 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;
- 5.9. if there is slippage in a timetable, the parties will agree to an amendment of that timetable without the need for intervention by the Court and forward a Consent Order to the Registrar by email so that Orders may be made in Chambers or the matter re-listed for further directions;
- 5.10. requests for Court intervention in relation to timetabling will only be sought rarely when, for good reason, agreement has proved to be impossible;
- 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:
  - (a) the issue(s) in respect of which the Court will need expert assistance;
  - (b) the name(s) of and field of expertise of any proposed witness(es) who is (are) to assist the Court;
  - (c) the questions to be answered or the issues to be addressed by the expert(s);
  - (d) 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;
  - (e) 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 it is expected that the parties will attend upon the Registrar in Equity either in Court or in Chambers 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 Chambers on application in writing. Communication with the Registrar concerning case management is to occur by email at [supremecourt.equityregistrar@justice.nsw.gov.au](mailto:supremecourt.equityregistrar@justice.nsw.gov.au). When the parties request the Registrar to make Consent Orders in Chambers, it is imperative that those orders include the vacation of any date for directions hearings or the hearing of motions that the parties no longer wish to maintain and provision for a future listing.
  
12. The following protocols should be observed when communicating with the Registrar:
  - (a) The subject line of any emails to the Registrar should include the file number, party details and the next listing date.
  - (b) All parties should be copied into the email.

- (c) If you are asking the Court to make orders or directions the email may only be sent with the consent of all the parties.
- (d) 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.
- (e) The text of any orders the parties are seeking should be included in the body of the email.
- (f) Emails must be sent as early as possible and no later than 12 noon the day prior to the next listing.

### **Slippage**

13. If there is a failure to comply with any of the orders in the Usual (or Modified) Order for Hearing, the parties must re-list the matter before the Registrar (or the Trial Judge) or alternatively file Consent Orders with the Registrar (or the Trial Judge) to adjust the timetable to ensure the hearing date is not jeopardised.

### **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.
16. At the first return date the Registrar in Equity will make directions for the preparation of the application for hearing.
17. When the Registrar in Equity considers it appropriate, the application will be listed for call-over before the Applications List Judge on a Tuesday at 9:15 AM.
18. It is expected that the legal representatives who are to appear at the hearing of the application will attend that call-over and 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 will be allocated a date on a Friday before the Applications List Judge.
20. The Applications List Judge 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 for 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.



**T F BATHURST AC**

Chief Justice of New South Wales  
1 December 2016

### **Related information**

See also:

Supreme Court Practice Note SC Eq 8 – Urgent Matters in the Equity Division  
*Civil Procedure Act 2005*

### **Amendment history**

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**

By no later than 3 working days before the trial date the parties are to provide to the Associate to the Trial Judge a Court Book consisting of all evidence, any objections thereto (limited to those that are essential having regard in particular to s 190(3) of the Evidence Act 1995) and a short outline of submissions.

## **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**

No later than 5:00 PM on the Wednesday before the hearing date, the parties are to deliver to the Associate to the Applications List Judge a paginated Court Book containing the evidence, any objection thereto and a short outline of submissions.