

## PRACTICE NOTE SC CL 4

### Supreme Court Common Law Division - Defamation List

#### Commencement

1. This Practice Note commences 17 August 2005.

#### Application

2. This Practice Note, relevant parts of the Uniform Civil Procedure Rules and Pt 67 of the Supreme Court Rules will apply to all current and new proceedings for defamation.
3. The Court may direct that this Practice Note apply to any proceedings suitable to be entered in the Defamation List.

#### Definitions

4. In this Practice Note:

**s.7A trial** means a trial of issues provided by section 7A(1)(3) of the *Defamation Act 1974*

**12A Notice** means the notice provided for in Part 67 rule 12A

**CPA** means the *Civil Procedure Act 2005*

**List** means the Defamation List

**List Judge** means the judge of the Common Law Division assigned to administer the Defamation List

**SCR** means the *Supreme Court Rules 1970*

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

#### Purpose.

5. The purpose of this Practice Note is to explain the operation of the Defamation List in the Common Law Division.

#### Removal from the List

6. Should the Court order the removal of proceedings from the List, this Practice Note (subject to paragraph 7 below) shall cease to apply to the proceedings.

7. The Court may direct that this Practice Note shall continue to apply to the proceedings to the extent stated in the direction.

8. A direction for removal from the List shall not affect any orders made or directions given prior to removal.

#### Endorsement of documents

9. A party must add the words "Defamation List" under the heading and title of a document filed by that party in proceedings that:

- are entered in the List, or
- will be entered in the List as a result of the filing of the document.

#### Case management

10. The Court intends to dispose of defamation proceedings within 12 months of commencement. From their entry in to the List, a registrar will actively manage all cases under the guidance of the List Judge. If a matter is not progressing satisfactorily, it will be listed before the List Judge for corrective action. Parties are expected to conduct cases in line with the principle of the resolution of issues in a just, quick and cost effective manner, as set out in section 56 of the CPA, so that they will be before the Court on only the following occasions:

- the first return date of the Statement of Claim for directions;
- the determination of any disputes or objections including those concerning imputations (Part 67, rule 12A of SCR);
- (c) callup for the trial of issues provided for by s.7A(1)(3) of the *Defamation Act 1974* ("s.7A");
- the s.7A trial;
- the Final Directions Hearing fixed at the conclusion of the s.7A trial; and
- the trial of the balance of the proceedings.

### **Statement of Claim**

The Statement of Claim must contain the full and complete particulars as required by UCPR 15.1 and Part 67 rule 12 of the SCR.

### **First return date**

11. At filing of the Statement of Claim, the Court will fix a return date not less than 28 days from the date of filing. Parties are expected to strictly comply with the requirements for entry of appearances and 12A notices and replies.

12. On the return date before the registrar;  
(a) the defendant will be required to state whether it admits publication of the matter complained of; and  
(b) the parties will be required to state whether they dispense with matters requiring formal proof for the purposes of the s.7A trial.

### **Part 67 rule 12A disputes**

13. The List Judge will hear and determine any rule 12A disputes or objections.

14. Upon the resolution of disputes or objections and the determination of all issues as to form and capacity of imputations, the proceedings will be set down for the s.7A trial.

### **Directions as to s.7A trial**

15. Directions will be given by the List Judge as to the preparation of the proceedings for the s.7A trial, including the exchange of witness statements (for example expert reports, including reports by expert translators), in respect of each party's case in chief.

16. Those directions will not, otherwise than in exceptional circumstances, require any party to give interim discovery, or authorise any party to administer interrogatories, in relation to s.7A trial issues.

17. The conduct of the 7A trial will be a matter for the trial judge.

### **Directions as to the final hearing**

18. Upon the completion of the s.7A trial, the trial Judge will direct the parties to a directions hearing before the registrar not later than 7 after the hearing. Directions as to the filing of a defence and any other necessary matters as outlined in paragraph 10 of this Practice Note.

19. The Defence and Reply must contain full and proper particulars of all matters required by the UCPR, the SCR and as otherwise directed.

20. Directions will be given in relation to remaining pleadings, discovery and interrogatories bearing in mind the principles in paragraph 10 of this Practice Note. If any objection or dispute in relation to particulars is to be made to any matter pleaded, a 12A notice must be given.

### **Discovery and interrogatories**

21. By reason of the parties' obligation to properly particularise their respective cases in the pleadings, it will be expected that all issues, at the time of the filing of the Reply, will have been exposed to enable the parties to comply strictly with Rules and directions as to discovery and inspection.

22. Generally, leave to issue more than 30 interrogatories will not be granted.

### **Trial of the balance of the issues**

23. The conduct of the trial of the balance of the issues will be for the trial Judge. This trial is to be a trial in the strict sense and not an occasion for the parties to seek to ventilate any interlocutory matters.

### **Other interlocutory proceedings**

24. If, at any stage, a party seeks interlocutory relief, that relief should be sought formally by the filing of a notice of motion returnable in a Defamation Directions List no earlier than 14 days from the issue of the notice of motion. With that notice of motion must be filed an affidavit containing relevant matters by way of evidence in support of the relief sought, together with an outline of submissions, to which the opposing party must respond in writing no later than 3 days before the return date.

**Injunctions against publication**

25. The practice of the Court is for all defamation matters to be dealt with in the Common Law Division, and applications for an injunction against publication of defamatory matter should be made to the List Judge or, if that Judge is unavailable, to the Common Law Duty Judge rather than in the Equity Division.

J J Spigelman AC  
Chief Justice of New South Wales  
17 August 2005

**Related information**

Practice Note SC CL 4 was issued and commenced on 17 August 2005.  
This Practice Note replaced Former Practice Note Nos. 85 and 114 on 17 August 2005.

See also:

Practice Note SC CL 1 Supreme Court Common Law Division – General  
Practice Note SC Gen 1 Supreme Court – Application of Practice Notes  
Practice Note SC Gen 4 Supreme Court – Affidavits  
Practice Note SC Gen 11 Supreme Court – Joint conferences of expert witnesses  
*Civil Procedure Act 2005*  
*Uniform Civil Procedures Rules 2005*  
*Supreme Court Rules 1970*  
*Defamation Act 1974*

Amendment history: