

PRACTICE NOTE SC CL 5

Supreme Court Common Law Division – General Case Management List

Commencement

1. This Practice Note commences 29 January 2007.

Application

2. This Practice Note applies to proceedings mentioned in paragraph 5 of this Practice Note which are in, or to be entered in, the General Case Management List.

Definitions

3. In this Practice Note:
 - ADR** means Alternative Dispute Resolution
 - Concurrent expert evidence** means two or more expert witnesses giving evidence at the one time.
 - CPA** means the *Civil Procedure Act 2005*
 - Evidentiary statement** means a statement by the plaintiff which will form the basis of his or her evidence in chief or where the plaintiff is a corporation or is unable as a result of age or disability to give evidence a statement by an appropriate officer of the corporation or by that person through whom it is intended to provide the factual basis for the plaintiff's case in chief.
 - GCM** means General Case Management
 - GCM document** means the document in Appendix A of this Practice Note.
 - List** means the General Case Management List
 - Single expert witness** means an expert witness jointly retained by the parties or appointed by the Court in accordance with UCPR Part 31 r 31.37(2).
 - UCPR** means *Uniform Civil Procedure Rules 2005* (as amended)

Introduction

4. The purpose of this Practice Note is to explain the operation of the General Case Management List.

Proceedings covered by GCM

5. GCM applies to the following proceedings in the Common Law Division:
 - all active proceedings commenced by statement of claim;
 - proceedings transferred from another court or from another division of the Supreme Court; and
 - any other proceedings the court directs that it applies to.
6. GCM does not apply to:
 - proceedings in the Defamation List;
 - proceedings in the Professional Negligence List;
 - proceedings in the Possession List; and
 - proceedings that are commenced in the Administrative Law List.
7. The court may, at any time after the commencement of proceedings, direct that GCM apply to those proceedings.

Removal from the list

8. Upon proceedings being removed from the List, this Practice Note shall, subject to paragraph 9 not apply to the proceedings from the making of the order.

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

10. The making of an order removing proceedings from the List shall not affect any orders made or directions given prior to such removal.

The GCM document

11. In relation to any party, the GCM document refers to the document which, by virtue of this Practice Note, may be required to be filed by that party. The form and content of the GCM document are explained in Appendix A.

12. A plaintiff must file the GCM document at the same time as filing the originating process unless the proceedings are only for a liquidated demand or only for a liquidated demand and interest under Section 97 of the Civil Procedure Act ("default proceedings").

13. Where a defence or cross claim is filed in default proceedings the plaintiff must file the GCM document within one month after being served with an appointment for Directions Hearing and a defence and/or cross claim.

14. Each other party must file the GCM document not later than one month before the date of the Directions Hearing.

Directions Hearings

15. Proceedings in the List will generally be managed by way of Directions Hearings conducted by a Judge or Registrar.

16. The first Directions Hearing will be appointed for approximately 3 months after proceedings are entered in the List. The date of the first Directions Hearing will be given by the registry in a notice issued at the time of filing the statement of claim to be served by the filing party.

17. Upon a defence or a statement of cross claim being filed in default proceedings, the registry will give notice to all parties with an address for service in the proceedings of the date of the first Directions Hearing.

18. Where proceedings are transferred to the Common Law Division from another division of the Court or from another court, the Court appoints a date for the Directions Hearing upon receipt of the transferred file. The registry will advise parties with an address for service of the date.

19. At a Directions Hearing, proceedings may be listed at a specified future date for a further Directions Hearing.

20. Directions Hearings, other than the first Directions Hearing for cases to be heard in Sydney, may be conducted by online court or by telephone.

21. Parties who wish to use online court shall do so in accordance with Practice Note SC Gen 12.

22. Parties wishing to avail themselves of telephone facilities must advise the Sydney Registry in writing at least 7 days prior to the date scheduled for the Directions Hearing. This written advice is to be marked to the attention of "The Common Law List Clerk" and must indicate the telephone number that the party or the relevant legal representative wants to be called at for the Directions Hearing. This advice can be forwarded by facsimile transmission to (02) 9230 8234 or by email to supreme_court@courts.nsw.gov.au. Directions Hearings involving parties to be contacted by telephone may have to be re-scheduled to a different time. The registry will contact those parties seeking a telephone Directions Hearing, and the other parties if the Directions Hearing has to be re-scheduled, to confirm the date and time of the Directions Hearing. Parties seeking a telephone Directions Hearing

must ensure that the telephone number nominated is available from 10 minutes before the confirmed time of the Directions Hearing. A telephone Directions Hearing may not be available if the case involves multiple defendants that are separately represented and it is thought impractical to use the facility.

Action prior to first directions hearing

23. The originating process and pleadings should be as brief and precise as the nature of the case allows.

24. It is expected that the parties' legal representatives will have discussed the case before the first Directions Hearing and will have:

- narrowed issues and identified any matters of agreement.
- agreed on suitable interlocutory orders, directions or arrangements;
- prepared a draft timetable for the future management of the proceedings;
- prepared draft short minutes of any orders or directions to be sought at the Directions Hearing; and
- discussed the possibility of settling the dispute by ADR.

Representation

25. Each party not appearing in person must be represented at the Directions Hearing by a barrister or a solicitor familiar with the subject matter of the proceedings and with instructions sufficient to enable all appropriate orders and directions to be made.

Actions at a directions hearing

26. The purpose of a Directions Hearing is to ensure the just, quick and cheap disposition of proceedings in accordance with the overriding purpose set out in section 56 of the CPA. Each party is obliged to notify the Court and the other parties if they are aware of any substantial default that cannot be cured by the making of consent variations to directions or timetables.

27. The tasks at a Directions Hearing include, but are not limited to:

- considering whether the proceedings would more appropriately be heard in the District Court and making a consent order accordingly;
- defining the matters in issue, including liability. If no defence (or defence to cross-claim) has been filed the Registrar may direct that there be judgment as to liability on that claim;
- considering whether there should be a separate trial of the liability issue held before the trial of issues as to quantum, especially in the case of a child plaintiff where the assessment of damages may take some time before being able to be determined;
- directing that a party or all parties serve or file and serve witness statements - the purpose of such a direction being to facilitate clarification of issues and realistic negotiations for settlement;
- considering whether ADR is suitable;
- establishing whether any party requires a trial by jury (bearing in mind the provisions of UCPR 29.2);
- making consent orders for the completion at the earliest possible time of interlocutory steps such as discovery, interrogatories, views, medical examinations and expert reports;
- directing that a party or all parties serve or file a statement of damages – the purpose of such a direction being to facilitate what heads of damage are genuinely in dispute and to provide a basis for realistic negotiations for settlement.

28. At the first Directions Hearing a plaintiff is to provide to each party an evidentiary statement. A plaintiff is not precluded from supplementing the evidentiary statement with oral evidence. If it is intended to raise by oral evidence issues not covered by the evidentiary statement an amended evidentiary statement is to be served on each party as soon as practicable after the need to amend the evidentiary statement arises.

29. Each defendant is to serve on the plaintiff within 28 days of the receipt of the evidentiary statement a statement of issues in dispute. The statement of issues in dispute is to concisely set out those facts which the defendant intends to establish in respect of each issue in dispute.

30. Each defendant is to notify the plaintiff within 28 days of the receipt of the evidentiary statement of those parts of the evidentiary statement which the defendant requires to be given orally.
31. A plaintiff is to serve on each party within 14 days of the receipt of the statement of issues in dispute a statement identifying those issues which are agreed and not agreed.

Expert witnesses in personal injury actions

32. The Court is concerned about the number of experts often expected to give evidence in personal injury cases. The practice of having a large number of experts qualified, both medical and otherwise, whose opinions may be overlapping and whose reports either are not used or are of little assistance to the Court when tendered, is costly, time consuming and productive of delay. The attention of practitioners in cases in which a claim is made for personal injury or disability is drawn to Practice Note PN SC Gen 10 which deals with "Single Expert Witnesses".
33. Where it is considered that an unnecessary expert has been qualified or is sought to be called to give evidence, the Court may:
 - reject the tender of the expert's report;
 - refuse to allow the expert to be called; and
 - disallow any costs incurred in qualifying, in having the expert's report prepared or in calling the expert to give evidence.
34. As a guide, the number of expert witnesses giving evidence on behalf of a party shall be limited to:
 - (a) one medical expert in any speciality, unless there is a substantial issue as to ongoing disability, in which case the number shall be limited to two in any relevant speciality concerning that disability; and
 - (b) two experts of any other kind.
35. Actuarial reports will as a rule be considered unnecessary except in special circumstances where they are shown to be of assistance in the assessment of damages, for example in proceedings under the *Compensation to Relatives Act 1897* or where a claim is made for the costs of future fund management.

Concurrent expert evidence

36. This part of the Practice Note applies to all proceedings in which a claim is made for damages for personal injury or disability.
37. All expert evidence will be given concurrently unless there is a single expert appointed or the Court grants leave for expert evidence to be given in an alternate manner.
38. At the first Directions Hearing the parties are to produce a schedule of the issues in respect of which expert evidence may be adduced and identify whether those issues potentially should be dealt with by a single expert witness appointed by the parties or by expert witnesses retained by each party who will give evidence concurrently.
39. In the case of concurrent experts, within 14 days of all expert witness statements/reports being filed and served, the parties are to agree on questions to be asked of the expert witnesses. If the parties cannot reach agreement within 14 days, they are to arrange for the proceedings to be re-listed before the Court for directions as to the questions to be answered by the expert witnesses.
40. In the case of concurrent experts the experts in each area of expertise are to confer and produce a report on matters agreed and matters not agreed within 35 days of the first Directions Hearing or such other time as the Court may order.

Single expert witness

41. This part of the Practice Note applies to all proceedings in which a claim is made for damages for personal injury or disability.
42. At the first Directions Hearing, a single expert direction will be made in respect of those issues considered to be appropriate for a single expert. In all proceedings in which a claim is made for damages for personal injury, a single expert direction as to damages will be taken to have been made at the first Directions Hearing unless otherwise ordered.
43. A single expert direction, when made in those terms, means that the following directions are to be taken as having been made, with such variations as may be specified at that time or subsequently:
 - Any expert evidence is confined to that of a single expert witness in relation to any one head of damages, including but not limited to the nature, extent and cost of required nursing care or domestic care (including claims under *Griffiths v Kerkmeyer*), physiotherapy, speech therapy, home modification, motor vehicle or aids and equipment, being evidence of the kind customarily given (by way of example) by rehabilitation consultants, occupational therapists, nursing and domestic care providers, architects, builders, motor vehicle consultants, and by aids and equipment suppliers.
 - Evidence may be provided by the same single expert in relation to more than one head of damages provided the expert is appropriately qualified. It is contemplated, however, that there may be a number of single expert witnesses retained or appointed in the one proceedings.
 - In relation to any head of damages as to which any party wishes expert evidence to be adduced, the parties are to agree on a single expert to be retained and are to obtain the consent of the expert together with an estimate of the time required by the expert to complete the report within 14 days from a date specified in the order as the commencement date of the direction, otherwise within 14 days from the making of the direction.
 - If the parties are unable to agree on a single expert or obtain the consent of the expert within the 14 day period referred to in the previous paragraph, the parties are to notify the Court within a further 3 days and the Court will pursuant to Part 31 of the UCPR appoint a Court expert to be the single expert.
 - Within 14 days from the selection or appointment of a single expert witness the parties are to brief the expert in such manner as the parties may agree with material sufficient to enable the expert to prepare a report. If the parties do not agree as to the manner of briefing the expert or as to the material to be provided to the expert or as to the questions to be put to the expert, the parties are to notify the Court within 3 days for the purpose of having the matter re-listed for further directions as to briefing the single expert.
 - If the parties agree or the single expert witness so requests, the plaintiff in the proceedings is to submit to clinical examination by the single expert witness.
 - Within 21 days from the date on which a single expert witness is so briefed or within the time estimate provided by the single expert witness, the expert is to send his or her report to each of the parties to the proceedings, through their legal representatives.
 - A single expert witness may be requested to provide a supplementary report taking into account any new or omitted factual material. The provisions of this part of the practice note apply to such a supplementary report *mutatis mutandis*.
 - Any party may, within 14 days from receipt of the report, put a maximum of 10 written questions to the expert, but for the purpose only of clarifying matters in the report unless the court otherwise grants leave. The expert is to answer the questions within 14 days.
 - The report of a single expert witness and any question put to the expert and the expert's answer thereto may be tendered by any party at the trial subject to all just exceptions.
 - A single expert witness may be cross-examined at the trial by any party.
 - A single expert witness's fee for preparation of the report and any supplementary report and for attending Court, if required to do so, is to be paid by the parties equally, subject to other agreement or direction and subject to any later order concerning the costs of the proceedings. A single expert witness's fee for answering questions put by a party is to be paid by the party, subject to the same qualification.
 - A single expert witness may apply to the Court for directions.

Alternative Dispute Resolution

44. At any Directions Hearing, the Court may consider whether the proceedings are suitable for ADR.
45. ADR includes:-
- mediation pursuant to the provisions of Part 4 of the CPA or otherwise;
 - arbitration pursuant to the provisions of Part 5 of the CPA.
46. If the matter appears to the Court to be appropriate for resolution by mediation or arbitration, the Court will refer the proceedings for mediation or arbitration.
47. The Court may give directions requiring statements from parties including a timetable to enable parties to be prepared for mediation.
48. Where proceedings involve a claim for damages in respect of personal injuries or in respect of the death of any person, the Court may, at a Directions Hearing, refer the proceedings for arbitration by a single arbitrator.
49. Where the court refers proceedings for arbitration, the court may give directions for the conduct of the arbitration.

Variation of directions and timetable

50. Case management directions given at a Directions Hearing and times set for compliance with any direction, may be varied:
- (a) by consent of all parties, so long as such variation does not extend the time for compliance with any direction beyond the day specified by the Court for compliance with the last direction made; or
 - (b) by the Court.
51. Where a party seeks a variation of the directions and timetable which is not consented to by all other parties or, where a party is in default in timely compliance with any direction, any party may apply to have a further Directions Hearing listed.

Listing for hearing

52. When ready for trial, for proceedings in which a claim is made for damages for personal injury or disability, standard directions in the form of Appendix B are deemed to have been made, unless the Court otherwise orders.

APPENDIX A

53. Each party files the GCM document in order to provide the Court with information which will ensure that the Directions Hearings are efficient and effective.
54. A GCM document is not a pleading. It may be amended at any time without leave, but any amendment may be taken into consideration upon the question of costs.
55. In addition to the matters specifically required by this Practice Note to be included in the GCM document, any party may include in that document, for the information of the Court and the other parties, any further information which that party wishes to be taken into account for any purpose at the Directions Hearings.

56. If a report or other document which is annexed to a party's GCM document has already been served on another party, a further copy of that report or document need not be annexed to the copy of the GCM document which is to be served on that party. That copy of the GCM document must however include a schedule listing the reports and documents which have been served and the date of service.

Plaintiff's GCM document

P1.1 The plaintiff's GCM document is to contain:-

P1.1.1 a concise narrative of the facts the plaintiff intends to prove on the issue of liability, so drafted as to expose the specific matters of fact, but not law, upon which liability is likely to depend;

P1.1.2 where the plaintiff's claim arises out of an event that has been the subject of previous proceedings, such as a prosecution, a coronial inquest or an inquiry – a statement clearly identifying the previous proceedings.

P.1.1.3 where the plaintiff's claim is for damages for personal injuries:-

(a) a statement about any other proceedings the plaintiff has brought in any court for damages for personal injuries which may be relevant to the assessment of damages in the proceedings in which the GCM document is filed. The statement must clearly identify the other proceedings even if they are not related to the event out of which the present proceedings arise; and

(b) full particulars of any accident or injury the plaintiff has suffered which is not the subject of a claim in the proceedings in which the GCM document is to be filed and which may be relevant to the assessment of damages;

Defendant's GCM document

D2.1 The defendant's GCM document is to contain:-

D2.1.1 a concise narrative of the facts the defendant intends to prove on the issue of liability, including contributory negligence, so drafted as to expose the specific matters of fact which are in issue;

D2.2 Where the plaintiff's claim against the defendant is for damages for personal injuries, the defendant is to annex to the GCM document:-

D2.2.1 a copy of any claim form or written report of the injury or accident the defendant or its insurer has received from the plaintiff;

D2.2.2 where the defendant or its insurer has interviewed the plaintiff, and one of the purposes of that interview was to prepare for potential or existing litigation, a copy of any statement made by the plaintiff in that interview, relating to liability or contributory negligence in relation to the claim;

D2.2.3 any documents referred to in P1.2.1 in the possession of the defendant that have not already been served by any other party;

D2.2.4 a list only of any medical certificate or medical report held by the defendant, issued by a doctor who has treated the plaintiff in respect of the injuries alleged in the statement of claim; and

Cross-Claimant's GCM document

XC3.1 A cross-claimant's GCM document is to contain:-

XC3.1.1 a concise narrative of the facts the cross-claimant intends to prove on the issue of the cross-defendant's liability, so drafted as to expose the specific matters of fact which are in issue;

XC3.1.3 any information of the type referred to in P1.2.1 that the cross-claimant knows;

Cross-Defendant's GCM document

XD4.1 A cross-defendant's GCM document is to contain:-

XD4.1.1 a concise narrative of the facts the cross-defendant intends to prove on the issue of liability, including contributory negligence, so drafted as to expose the specific matters of fact which are in issue;

XD4.2 Where the plaintiff's claim is for damages for personal injuries:-

XD4.2.1 a copy of any claim form or written report of the injury or accident the cross-defendant or its insurer has received from the plaintiff or the cross-claimant;

XD4.2.2 where the cross-defendant or its insurer has interviewed the plaintiff or the cross-claimant, and one of the purposes of that interview was to prepare for potential or existing litigation, a copy of any statement made by the plaintiff or the cross-claimant in that interview relating to liability or contributory negligence in relation to the claim;

XD4.2.3 any documents referred to in P1.2.1 and P1.2.2 of this Appendix in the possession of the cross-defendant that have not already been served by any other party.

APPENDIX B

57. Within 7 days of a hearing date having been allocated:

- (i) The plaintiff's legal representative is to prepare a draft chronology of relevant events and serve a copy of it upon other parties which have an address for service;
- (ii) Each party is to prepare a draft schedule of damages, outlining in detail the heads of damages, and identifying the evidence which supports that head of damage.
- (iii) Each party is to prepare its final schedule of issues in dispute.

58. Within 28 days of a hearing date having been allocated a plaintiff is to file and serve a joint chronology, a schedule of damages and a schedule of issues which identify the areas of agreement and the areas in dispute.

J J Spigelman AC

Chief Justice of New South Wales

5 December 2006

Related information

This Practice Note was issued on 5 December 2006 and commenced on 29 January 2007.

This Practice Note replaces Practice Note SC CL 5 issued on 17 August 2005.

Practice Note SC CL 5 replaced former Practice Note No. 128 on 17 August 2005.

See also:

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

Practice Note SC Gen 6 Supreme Court - Mediation

Practice Note SC Gen 10 Supreme Court – Single Expert Witnesses

Civil Procedure Act 2005

Uniform Civil Procedure Rules 2005 (as amended)