

Practice Note SC EQ 02

Supreme Court Equity Division - Admiralty List

Commencement

1. This Practice Note was issued on 25 June 2010 and commences on 1 August 2010.

Application

2. This Practice Note applies to proceedings in, or to be entered in, the Admiralty List in the Equity Division of the Supreme Court.

Definitions

3. In this Practice Note:

Act means the *Admiralty Act 1988 (Cth)*

List means the Admiralty List

List Judge means the judge of the Equity Division assigned to administer the Admiralty List

Rules means the *Admiralty Rules 1988 (Cth)*

SCR means the *Supreme Court Rules 1970*

UCPR means the *Uniform Civil Procedure Rules 2005*

Introduction

4. The Purpose of this Practice Note is to set out the matters which must be assigned to the List, the mode of entry in, and removal from, the List, and the case management procedure which will be employed in the List with the aim of achieving the just, quick and cheap disposal of proceedings.

Assignment of business and entry in the Admiralty List

5. The Court will assign proceedings to the Equity Division and enter them in the List if the matter concerns, or involves jurisdiction of the Court under, any of:

(1) the *Admiralty Act 1988 (Cth)*

(2) the *Limitation of Liability for Maritime Claims Act 1989 (Cth)*

(3) the *Shipping Registration Act 1981 (Cth)*

(4) the *Navigation Act 1912 (Cth)*

(5) the *Marine Insurance Act 1909 (Cth)* or equivalent legislation

Entry in the List on commencement of proceedings

6. Where a plaintiff, on his or her Summons or Statement of Claim filed in the Equity Division, adds "Admiralty List" next under the heading and title, the proceedings shall be entered in the List without any order for entry.

6A. Where a plaintiff commences proceedings by way of a Writ *in rem*, the Writ shall have the words "Admiralty List" in its heading and be entered in the List.

7. A document filed in the Court in the List must be entitled as required in Form 1 of the Rules and must otherwise comply with the forms prescribed by the Rules and the UCPR.

8. All matters in the List are case managed from commencement by the List Judge. A plaintiff commencing proceedings in the List should contact the Associate to the List Judge prior to filing the initiating process to request a date for the proceedings to be listed for directions. That date will then be inserted as the return date in the Summons, Statement of Claim or Writ *in rem* upon filing in the Registry.

Entry into and removal from the List

9. The Court may, on the application of a party or of its own motion, if it is satisfied that it is proper to do so, order that proceedings be entered in or removed from the List and may give such further directions as to the continuance of the proceedings as it thinks fit.

Directions and applications

10. Directions hearings and applications by Notice of Motion are heard by the List Judge at 9.30am on Thursday.

11. Representatives of parties attending directions hearings are expected to be sufficiently informed of the nature of the case and its current position to enable the List Judge to deal with the matter expeditiously and with minimum expense to the parties.

12. Directions for timetables and other orders or directions which have been agreed between the parties may be made without the parties' attendance in Court by sending to the Associate to the List Judge by email or facsimile Short Minutes of Order signed by the legal representatives of all parties at least two days before the dated fixed for directions.

13. A party may at any time, and notwithstanding any earlier direction, arrange for a matter to be listed for directions by contacting the Associate to the List Judge.

14. A party wishing to make an urgent application during business hours should contact the Associate to the List Judge to arrange a time for the matter to be listed.

15. A party wishing to make an urgent application outside normal business hours should apply to the Equity Duty Judge, who will, if possible, refer the matter to the List Judge, but otherwise deal with the application.

16. The Court's expectations of the parties to proceedings in the List and of the legal practitioners appearing in the List include that:

(1) careful review of the case will be made as early as practicable for the purpose of informing the Court of its suitability for mediation, for reference out of all or some of the issues, for the use of a single expert or a Court Appointed Expert, or for the use of an appropriate concurrent evidence process;

(2) 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;

- (3) if there is slippage in an agreed timetable, further agreement will be reached without the need for the intervention of the Court; and
- (4) requests for Court intervention in relation to timetabling will only be sought rarely when, for good reason, agreement has proved to be impossible.

17. Once proceedings have been commenced, the parties to proceedings in the List and the legal practitioners appearing in the List are to consider:

- (1) what steps (including the making of offers) have been, or should be, taken to settle or mediate the matter;
- (2) whether at an early stage, the dispute or some part or parts of the dispute should be referred to a referee pursuant to Part 20 rule 13 of the UCPR; and
- (3) whether, having regard to the nature of the case, the amount involved and the issues, the matter ought to be listed for an extended directions hearing at which proposals for speedy determination can be canvassed and, where appropriate and after discussions with the other parties, re-list the matter for directions.

Cargo claims

18. At an early stage in cargo claim proceedings, the parties to proceedings in the List and the legal practitioners appearing in the List are to address at least the following matters, with the aim of defining or eliminating issues and avoiding dispute about pleadings:

- (1) the identification of the relevant bill of lading or sea carriage document or other transport document;
- (2) the identity of the carrier or carriers, contractual and actual, and the nature of any dispute about that;
- (3) if the party said to be the actual carrier is different from the contractual carrier, the terms under which the actual carriage is said to have been performed;
- (4) if the goods were containerised, whether the container was packed or stuffed by or on behalf of the shipper or other cargo interest or by or on behalf of the carrier;
- (5) the description of the goods in the bill of lading or sea carriage document or other transport document;
- (6) the legal regime said to govern the carriage: which national law and through it, or otherwise, which convention or regime applies;
- (7) whether any limitation of liability or time bar argument arises or may arise;
- (8) the causes of action relied upon against each defendant;
- (9) provision of proper particulars of:
 - (a) any claims; and
 - (b) any defences;
- (10) if title to sue is in issue, the facts said to give rise to the title to sue under the relevant convention, legislation or otherwise;
- (11) the nature of the damage and the detailed breakdown of the claim; and

(12) the provision at an early stage of documents and other information relevant to the claim and/or the defence of the claim which the other party does not hold.

Hearings

19. List matters will be fixed for hearing only by the List Judge and, in so far as is possible, will be given priority in the Court's calendar.

20. Parties should be prepared to take an early date for a final hearing and will be encouraged to streamline the issues for trial.

21. Prior to the matter being set down for hearing, the parties, by their legal representatives, are to advise the Court as to their respective positions in respect of:

- (1) whether the matter ought to be referred to mediation;
- (2) whether the dispute, or some part or parts of the dispute, should be referred to a referee pursuant to Part 20 rule 14 of the UCPR or to a court-appointed expert pursuant to Part 31 rule 46 of the UCPR;
- (3) whether the Usual Order for Hearing (Annexure A to Practice Note No. SC Eq 1) should be made in respect of expert evidence; and
- (4) whether any issues are suitable for a separate determination in accordance with Part 28 of the UCPR.

22. At the time application is made for a hearing date, each party is to advise the Court:

- (1) whether it will apply to have resort to s 190(3) of the *Evidence Act 1995*;
- (2) whether there will be any need for videolink evidence and any perceived problems relating to the taking of such evidence;
- (3) the number of witnesses to be called by each party and whether any of the witnesses will require the assistance of an interpreter;
- (4) whether any particular issues as to admissibility of evidence are envisaged to require determination at trial; and
- (5) the length of time that the case is anticipated to take, having regard to the number of witnesses, the need for videolink evidence, the need for interpreters, and with due allowance for openings and submissions and any evidentiary or other issues expected to affect the length of the hearing.

23. The Usual Order for Hearing in Annexure A to Practice Note No. SC Eq 1 will apply to a matter set down for hearing in the List, unless some other order is made by the List Judge.

Registrar and Marshal

24. The officer of the Court authorised to be Registrar for the purposes of Rule 4(1) of the Rules is the Registrar in Equity.

25. The Chief Justice appoints an appropriate officer of the Court to the position of Marshal. The contact details for the current Marshal are available from the Court's website (www.lawlink.nsw.gov.au/sc).

Insurance of property arrested under the *Admiralty Act 1988*

26. The Act provides for the arrest of property (including vessels) by the Marshal in actions *in rem*. The Marshal does not at any time during the period of arrest hold commercial insurance for the benefit of any person who has an interest in arrested property.

27. Persons with an interest in arrested property and their solicitors may wish to consider the question of insuring the amount of their interest against consequential risks, including risks occasioned by any movement of a vessel.

J J Spigelman AC
Chief Justice of New South Wales
25 June 2010

Related information

See also:

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

Supreme Court Practice Note SC Eq 1 – Case Management

Admiralty Act 1988 (Cth)

Admiralty Rules 1988 (Cth)

Limitation of Liability for Maritime Claims Act 1989 (Cth)

Shipping Registration Act 1981 (Cth)

Navigation Act 1912 (Cth)

Marine Insurance Act 1909 (Cth)

Supreme Court Rules 1970

Uniform Civil Procedure Rules 2005

Evidence Act 1995

Amendment History

25 June 2010: this Practice Note replaced the previous version of SC Eq 2 issued on 13 November 2008.

13 November 2008: this Practice Note replaced the previous version of SC Eq 2 issued on 17 August 2005.

17 August 2005: Practice Note SC Eq 2 replaced Practice Note No. 84