

## PRACTICE NOTE SC Eq 10

### SUPREME COURT EQUITY DIVISION – REVENUE LIST

#### Commencement

1. This Practice Note was issued on 22 September 2010 and commenced on 1 October 2010.

#### Application

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

#### Definitions

3. In this Practice Note:

**Act** means the *Taxation Administration Act 1996*

**Chief Commissioner** means the Chief Commissioner of State Revenue and, where appropriate, includes the Commissioner of State Revenue

**Commissioner of Taxation** means the Commissioner of Taxation of the Commonwealth of Australia and, where appropriate, includes a Second Commissioner of Taxation, or a Deputy Commissioner of Taxation

**List** means the Revenue List

**List Judge** means the judge designated by the Chief Justice under section 28 of the *Supreme Court Act 1970* to be the Revenue List Judge

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

#### Introduction

4. The purpose of this Practice Note is to set out the case management procedures employed in the List for the just, quick and cheap disposal of proceedings.

5. Proceedings in the List will be case managed by the List Judge. Practice Note SC Eq 1 will not apply to proceedings in the List.

6. It is expected that this Practice Note will be observed in the conduct of proceedings in the List.

#### Entry in the List on commencement of proceedings

7. The plaintiff in proceedings seeking a review of an assessment (or other decision) of the Chief Commissioner under section 97 of the Act must:

- (a) add "Revenue List" in the heading and title of the Summons filed in the Equity Division;

(b) follow the procedures applicable to appeals in UCPR Pt 50, and in particular the Summons must be in the approved form (Form 84) and contain a statement setting out briefly but specifically the grounds relied on in support of the review;

(c) annex to the affidavit filed with the Summons in compliance with Schedule 10 of UCPR, copies of the relevant notice of assessment (or other decision of the Chief Commissioner), the objection and the notice of determination of the objection given by the Chief Commissioner under section 93 of the Act.

8. Where a plaintiff commences other proceedings to be entered in the List [1], "Revenue List" must be added in the heading and title of the Summons or Statement of Claim in the Equity Division.

### **Entry into and removal from the List**

9. The proceedings which may be entered in the List include proceedings commenced in the Common Law Division in which either the Chief Commissioner or the Commissioner of Taxation is a party, or in which an issue has arisen in relation to a law under which either of them exercises functions.

10. Where proceedings in the Common Law Division or in another specialist list in the Equity Division are entered in the List pursuant to UCPR Pt 45 r 45.2, the Court may give such further directions as to the continuance of the proceedings as it thinks fit.

### **Appeal Statements**

11. Each party to proceedings in which the plaintiff seeks a review of the decision of the Chief Commissioner under section 97 of the Act must file and serve an Appeal Statement which states in summary form and without undue formality:

(a) the basic elements of the party's case or defence;

(b) where applicable, the relief sought;

(c) the issues the party believes are likely to arise;

(d) the principal matters of fact upon which the party intends to rely;

(e) the party's contentions (including the legal grounds for any relief claimed) and the leading authorities supporting those contentions.

12. (a) The plaintiff must file and serve the Appeal Statement at the same time that the Summons is filed and served upon the Chief Commissioner;

(b) The Chief Commissioner must file and serve the Appeal Statement within 28 days of the date on which the Summons and the plaintiff's Appeal Statement are served on the Chief Commissioner.

13. All Appeal Statements must include a Front Sheet identifying the names of the parties and their designation as plaintiff(s) or defendant(s).

14. Appeal Statements must identify the real issues in dispute and comply, where possible, with UCPR Pt 14 r 14.6, r 14.7 and r 14.8.

#### **Initial directions hearing**

15. The Court will hold an initial directions hearing at a time appointed by the Court:

(a) in proceedings to which paragraph 7 applies, after the filing and service by the Chief Commissioner of an Appeal Statement under paragraph 12(b);

(b) in proceedings to which either paragraph 8 or paragraph 10 applies, after the entry in the List of the proceedings.

16. At the first directions hearing orders will be made and directions given with a view to the just, quick and cheap disposal of the proceedings. The orders and directions may relate to:

(a) the filing and service of pleadings;

(b) the provision of proper or further particulars;

(c) the service of affidavits of evidence by a specified date or dates [2];

(d) in an appropriate case, an order that the parties seek to agree some or all of the facts by a statement of agreed facts;

(e) orders for discovery;

(f) the issue of subpoenas.

17. At the first directions hearing the List Judge would normally make an order that all future directions hearings will be conducted in the first instance via online court. [3]. If such an order is made, all legal practitioners involved in the proceedings (including counsel) must ensure that they are registered users.

#### **Expert evidence**

18. Under UCPR Pt 31 r 31.19 a party considering or intending to adduce expert evidence at trial must promptly seek directions from the Court in that regard. A party to proceedings in the List must seek those directions:

(a) at the first directions hearing;

(b) by a request made on online court if the parties agree on the proposed Expert Evidence Directions in accordance with paragraph 13 of Practice Note SC Eq 5; or

(c) if the parties do not agree on the proposed Expert Evidence Directions, the issue should be raised on online court and the party who drafted the proposed directions should provide the Court with a copy via a message posted on online court.

19. Where experts' reports have been or are to be served (whether or not pursuant to an order or direction of the Court) the Court will, unless otherwise persuaded, direct, upon such terms as it thinks fit, that the parties cause the experts or some of them to confer with a view to identification of and a proper understanding of any points of difference between them and the reasons therefore and a narrowing of such points of difference. The Court may, at the same time or subsequently, direct that the parties and/or the experts, prepare an agreed statement of points of agreement, and of difference remaining, between experts following such conference and the reasons therefore (see UCPR Pt 31 r 31.20).

### **Interrogatories**

20. Interrogatories will not be permitted other than in exceptional circumstances.

### **Listing for hearing**

21. Upon fixing a date for hearing the Court will normally direct that the Usual Orders for Hearing as set out in [Annexure A](#) shall apply with or without modification. If for any reason the parties are of the view that the Usual Orders for Hearing should be modified, they must provide a Consent Modified Orders for Hearing by a message posted on online court.

22. In an appropriate case the Usual Orders for Hearing ([Annexure A](#)) may be modified to contain orders regarding expert evidence and provision of a Court Book (as to which see the Usual Order for Hearing set out in Annexure A to Practice Note SC Eq 1).

J J Spigelman AC  
Chief Justice of New South Wales  
22 September 2010

### **Related information**

See also:

*Taxation Administration Act 1996*

*Supreme Court Act 1970*

*Uniform Civil Procedure Rules 2005*

Practice Note SC Eq 1 – Case Management

Practice Note SC Eq 5 – Expert Evidence in the Equity Division

Practice Note SC Gen 12 – online court Protocol

### **Amendment history**

This Practice Note was issued on 22 September 2010 and commenced on 1 October 2010.

## **ANNEXURE A**

### **Usual Orders for Hearing**

1. No later than 10 working days before the hearing date the Plaintiff shall:
  - (a) deliver to the List Judge's Associate the originals of any affidavits to be filed at the hearing;
  - (b) serve on the Defendant, and deliver to the List Judge's Associate, a list of affidavits to be read, an outline of submissions, a list of authorities and a list of any objections to the Defendant's evidence.
2. No later than 5 working days before the hearing date the Defendant shall:
  - (a) deliver to the List Judge's Associate the originals of any affidavits to be filed at the hearing;
  - (b) serve on the Plaintiff, and deliver to the List Judge's Associate, a list of affidavits to be read, an outline of submissions, a list of authorities and a list of any objections to the Plaintiff's evidence.
3. No later than 2 working days before the hearing date the Plaintiff shall serve on the Defendant, and deliver to the List Judge's Associate, any written reply.
4. Each party has liberty to apply in online court.

### **Endnote**

[1] The proceedings which may be entered in the List are set out in UCPR Pt 45 r 45.7A

[2] Affidavits are not filed with the Court until final hearing and, for this reason, provision is made in the Usual Orders for Hearing in [Annexure A](#) for originals of the affidavits to be delivered to the Associate to the List Judge shortly before the hearing date.

[3] The Online Court Protocol is found in Practice Note SC Gen 12.[A](#)