

PRACTICE NOTE NO. SC Gen 17

Supreme Court - Representative Proceedings

Commencement

1. This Practice Note was issued on 22 February 2011 and commences on 4 March 2011.

Application

2. This Practice Note applies to representative proceedings under Part 10 of the *Civil Procedure Act 2005* (NSW) ("the Act").

General

- 3.1 Words and expressions in this Practice Note have the meanings given to them in Part 10 of the Act.
- 3.2 Subject to Part 10 of the Act, the Uniform Civil Procedure Rules 2005 apply to representative proceedings.
- 3.3 The aim of this Practice Note is to facilitate the just, quick and cheap conduct of representative proceedings by ensuring that the issues in contest are identified at an early date and that representative proceedings are not unnecessarily delayed by interlocutory disputes.
- 3.4 Representative proceedings are to be commenced in the Division of the Court appropriate to their subject matter in accordance with the *Supreme Court Act 1970* (NSW) and the Uniform Civil Procedure Rules.
- 3.5 Any practitioner who anticipates problems in complying with any aspect of this Practice Note is to raise the matter with the Court as soon as practicable to comply with obligations imposed by the *Civil Procedure Act*, s 56.

Commencement

- 4.1 In addition to the requirements of Part 6, Division 4 of the Uniform Civil Procedure Rules, an originating process must:
 - (a) describe or otherwise identify the group members either by name or characteristic,
 - (b) specify the nature of the claims and the relief sought by the representative party on his or her own behalf and on behalf of the group members, and
 - (c) specify the common questions of law or fact which are said to arise in the proceedings.
- 4.2 A representative party should plead his or her own claims so as to permit the proceedings to be used as a vehicle for determining both those claims and the issues common to the claims of group members.

Case Management

- 5.1 Representative proceedings will be case managed by a Judge or Associate Justice of the Division in which they are commenced.

- 5.2 The Registry will fix a date for an initial directions hearing approximately 6 weeks after the representative proceedings are issued.
- 5.3 The legal practitioners having primary responsibility for the conduct of the proceedings on behalf of each party should attend at the initial directions hearing.
- 5.4 In addition to orders made under Part 6, Divisions 4,5,6 and 7 of the Uniform Civil Procedure Rules, the Court will fix times:
- (a) for the giving of notice to group members of the commencement of the proceedings, and
 - (b) within which group members may opt out of the proceedings.
- 5.5 Notice to group members of the commencement of representative proceedings will usually be given after the close of pleadings.
- 5.6 A group member may opt out of the proceedings by giving written notice under Uniform Civil Procedure Rules, Part 58 rule 2 (s 162 (2)).

Notices to group members

- 6.1 Subject to directions of the Court, notice is to be given to group members in the following circumstances:
- (a) commencement of the representative proceedings (s 175(1)(a));
 - (b) amendment of pleadings varying the persons who may be group members (s 163(4));
 - (c) a motion seeking dismissal for want of prosecution (s 175(1)(b));
 - (d) proposed settlement or discontinuance of the proceedings (s 173);
 - (e) proposed withdrawal of the representative party (ss 174 and 175(1)(c));
 - (f) the bringing of money into court (ss 175(3) and 177(4)), and
 - (g) the need for proof of individual claims in respect of a fund (s 178(5)).
- 6.2 The form, content and manner of giving of any notice required under paragraph 6.1 will be approved by the Court (s 176). A representative party seeking approval of a notice to be issued must file and serve:
- (a) a draft notice;
 - (b) draft orders with respect to the proposed manner and timing of giving the notice;
 - (c) information as to the anticipated cost of giving notice in the manner proposed, and

(d) a draft order as to the payment of the costs of giving notice, if not to be borne by the representative party.

6.3 Subject to any directions given by the Court, a notice under paragraph 6.1 (a) should include the following information:

(a) a brief summary of the claims made and the relief sought in the representative proceedings;

(b) the right of any group member to opt out of the proceedings, the time within which that step should be taken (if it is to be taken) and the manner in which that step may be taken;

(c) the expected consequences for any group member of a favourable outcome of the proceedings as commenced by the representative party;

(d) that the proceedings will determine the rights of any group member who does not opt out of the proceedings in respect of the claims made by the representative party on behalf of group members, and

(e) the manner in which the costs of the proceedings will be borne and the immunity of group members from personal liability for any amount of costs, subject to the possible liability of any fund in which they are entitled to share to meet the costs of the representative party.

Communication with group members

7.1 A solicitor acting for a representative party is to give notice to the other parties as to which group members (if any) are clients of the solicitor.

7.2 Another party who wishes to communicate in relation to the proceedings with a group member who is not a client of the representative party's solicitor should do so in writing and should keep a written record of any communication initiated by the group member.

7.3 If the Court considers it necessary at any time for the proper management or disposition of the proceedings, it may order that a party produce the records of any communication between that party and a group member or group members.

JJ Spigelman AC

Chief Justice of New South Wales

22 February 2011

Related information

See also:

Civil Procedure Act 2005

Supreme Court Act 1970

Uniform Civil Procedure Rules 2005

Amendment history

This Practice Note was issued on 22 February 2011 and commenced on 4 March 2011.