



Practice Note: Common Law Division – Medical List

Document Details			
Subject	Common Law Division – Medical List		
Reference Number	PNCL-ML 1-2015		
Date Created	24 July 2015	Last Updated	10 August 2018
Authorised By	His Honour Judge Saccardo – Judge in Charge of the Medical List		
Note	Supersedes PNCL 3-2009 and all other Medical List Practice Notes		
Contents			
Introduction.....			2
The Common Law Registry.....			2
Issue of Proceedings			2
Effect of the filing of an Appearance.....			3
The Administrative Mention.....			3
Procedure for requesting standard timetabling Orders			3
Directions applicable to Orders Fixing an Initial Timetable to which all parties consent.....			4
Consent Orders			4
Directions Hearings.....			4
Requests to vacate listings, where the scheduled hearing is the next business day.....			5
Interlocutory Disputes			5
Impairment Assessment pursuant to the Wrongs Act.....			6
Pleadings.....			6
The Statement of Claim			6
The Defence			6
Discovery and Interrogatories			7
Exchange of medical and expert Reports and Special Damages			8
Mediation			8
Exchange of Further Expert Reports.....			8
Case Conference.....			9
Joint hearing or consolidation of proceedings			9
Setting Down For Trial Fee			9
Jury Fees.....			9
Vacation of Trial Dates.....			10
Ceasing to Act			10
Settlements.....			10
Applications for approval of compromise.....			10
Applications for extension of time for service of Writs			11
Schedules			

Introduction

- 1 This Practice Note deals with the operation of the Common Law Division - Medical List (the List).
- 2 The Medical List is established under Order 34A.04 of the Rules of Court. Order 34A.04(4) provides that the Medical List shall consist of any proceeding that includes a claim for damages in respect of death or bodily injury resulting from medical or the like treatment or advice given in respect of any physical or mental condition. This Practice note applies to the management of all such proceedings including those issued in regional Courts.
- 3 The general philosophy for management of the List will be on practicality, consensus and co-operation, ensuring that the issues in contention are clearly identified and as precisely as possible, to enable the just efficient timely and cost effective resolution of the real issues in dispute in a proceeding consistent with the demands of justice in accordance with the provisions of the *Civil Procedure Act 2010*.
- 4 His Honour Judge Saccardo together with Her Honour Judge Tsalamandris are responsible for the management of the List. The Associates to Judge Saccardo can be contacted on (03) 8636 6053 or (03) 8636 6480 or via email to judgesaccardo.chambers@countycourt.vic.gov.au; the Associates to Judge Tsalamandris can be contacted on (03) 8636 6612 or (03) 8636 6887 or via email to judgetsalamandris.chambers@countycourt.vic.gov.au.

The Common Law Registry

- 5 The Common Law Registry Pre-Trial Officers manage the administrative mention and directions hearing system in close consultation with the Judges in charge of the List.
- 6 Pre-Trial Officers produce Orders made 'on the papers' acting under instructions from the Judges in charge of the List.
- 7 All Orders made 'on the papers' are produced directly on the Case and List and Management System ("CLMS") and are available to be accessed by practitioners through Court Connect¹ on the County Court website.
- 8 All correspondence received by the Court in the Medical List is also logged on CLMS by the Pre-Trial Officers and a notation of receipt may be viewed on CourtConnect.²
- 9 The Common Law Registry can be contacted on (03) 8636 6515. Correspondence for the Medical List must be sent by email to commonlaw.registry@countycourt.vic.gov.au. If possible draft Orders 'on the papers' in Word format are to be submitted to the Common Law Registry by email as this will facilitate the production of Orders.
- 10 Orders submitted to the Common Law Registry must comply with the Directions Group Guidelines 2016 and 2018 Orders Booklet – Common Law Division which are available on the County Court Website. If correspondence does not comply with those documents, it will be returned and not actioned.
- 11 Correspondence to the Common Law Registry does not need to be copied to the Associates to the Judges in charge of the List unless the matter requires urgent attention.

Issue of Proceedings

- 12 To enter the Medical List when a proceeding is issued the plaintiff's practitioner must complete a Request to Enter a List form nominating the Common Law Division – Medical List.
- 13 Unless a further Order is made by the Court the proceeding will remain in that List and will be managed until the case is resolved.

¹ http://cjep.justice.vic.gov.au/pls/p100/ck_public_qry_main.cp_main_idx

² Ibid.

Effect of the filing of an Appearance

- 14 If a proceeding is to be defended, this will be indicated by a defendant filing an Appearance. The Rules of Court then require a defendant to file a defence.

The Administrative Mention

- 15 The filing of an appearance will trigger the Administrative Mention procedure.
- 16 A notice will be sent by the Court to the parties requiring the parties to submit proposed consent Timetabling Orders to the Court by a nominated date. No appearance by the parties is required on this date. The consent Orders must be signed by all parties on the record, outline the interlocutory steps required and indicate the mode of trial.
- 17 If the parties are not ready to proceed by the administrative mention date, they should contact the Common Law Registry indicating why the matter is not ready and submit proposed Consent Orders seeking an adjournment of the administrative mention.
- 18 Failure to respond to an administrative mention notice may result in a proceeding being struck out by the Court.

Procedure for requesting standard timetabling Orders

- 19 Parties are requested to submit Orders in the form of the standard timetable Orders that are reproduced at Schedule 1. The Orders are deliberately brief and the parties are expected to cooperate and reach agreement on the detailed steps required, for example in organising Mediation or preparing a Court Book.
- 20 Parties submitting Orders 'on the papers' should specify dates for each interlocutory step. Whilst the date of the trial will not be known to the parties at the time of submitting the timetabling Orders (that date being allocated by the registry in accordance with paragraph 23 hereof), the parties should Contact the Common Law Registry for an indication of available trial dates for guidance as to the dates to be fixed by them for the completion of interlocutory steps.
- 21 The timing of interlocutory steps should be fixed by the parties so that they allow the completion of:
- the investigation of the issues in dispute,
 - the assembly and exchange of the relevant medical and/or expert evidence,
 - all interlocutory matters, and
 - the convening of a Mediation in the proceeding within an appropriate time frame time prior to the trial date allocated for the proceeding.
- 22 Inappropriate dates suggested by the parties are liable to be changed by the Judge without further recourse to the practitioners.
- 23 If no dates are provided, dates will be given by the Judge in charge of the List.
- 24 Upon the filing of the proposed Timetable Orders to which all the parties to a proceeding consent, the court will give effect to the timetable set out in those minutes by the parties with the exception that the allocation of the Mediation date, the trial date and the dates for payment of trial and jury fees will be at the discretion of the court, in particular:
- In fixing the trial date, the court will allocate the earliest date available; and
 - In fixing the Mediation date, the court will allocate a date by which the parties are to mediate as being no later than two (2) months prior to the trial. Whilst this represents the date by which the parties are to mediate the matter, the parties are at liberty to appoint a date for Mediation at any time prior to this date. Should the parties propose a Mediation after this date however, they must seek the approval of the Judge in charge of the List by submitting consent Orders to the court.

Directions applicable to Orders Fixing an Initial Timetable to which all parties consent

- 25 Paragraph 25 is to apply only to a Standard Order Fixing an Initial Timetable of the type referred to in paragraphs 18 – 23 of these rules, if such an Order is signed by all parties to a proceeding and bears the title “**Initial Timetable Order which takes effect THREE DAYS after Filing**”.
- 26 Subject to further Order by the court upon the application by any party to a proceeding, the minutes of a proposed Order Fixing an Initial Timetable to which all the parties to a proceeding consent will take effect and be binding upon the parties at the expiration of three days after the filing of the minutes of the proposed Order with the court.

Consent Orders

- 27 Practitioners are encouraged to reach accord on matters of general management and to themselves resolve issues arising during the interlocutory stages of the proceeding to ensure that the proceeding progresses to a hearing date at the earliest opportunity.
- 28 Practitioners must utilise the dedicated Common Law Registry email (commonlaw.registry@countycourt.vic.gov.au) to submit proposed Consent Orders, signed by all relevant parties or their practitioners. Practitioners submitting Consent Orders in relation to listings for the next business day must refer to paragraphs 38 – 40.
- 29 Practitioners are encouraged to have Orders made ‘on the papers’ where the proposed Order sought is:
- by consent among all relevant parties, such consent being given in writing in respect of the proposed Orders;
 - capable of being dealt with on the papers; and
 - clearly and appropriately explained in the documents submitted.
- 30 Without purporting to be exhaustive of the types of matters which may be dealt with in this manner, these may include applications:
- for leave to amend the writ and or pleadings;
 - for leave to add or substitute parties;
 - for leave to discover;
 - for leave to interrogate;
 - for general directions, including standard Orders and a timetable; and
 - to adjourn Directions Hearings, Administrative Mentions or Trials, provided that a full explanation of the reasons for the application and proposed consent Orders are given.
- 31 Consent Orders should, in brief compass and where appropriate, set out the reasons for the making of the Order sought and indicate whether the proposed Order is likely to impact upon the feasibility of the Trial date and/or the timetable (if set). In which case, the parties are to submit revised timetable Orders.
- 32 Submission of Orders to be dealt with ‘on the papers’ denotes only that the parties have agreed that the matter is to be determined by the Judge in Chambers on the material provided without requiring any argument in open Court.
- 33 Consent Orders will be scrutinised by the Judge for the purpose of ensuring that the Orders comply with the practice of the List and the Judge may require the parties to attend a Directions Hearing before giving effect to the Orders submitted on the papers.

Directions Hearings

- 34 If the parties do not agree upon appropriate interlocutory directions, parties should write to the Common Law Registry Pre-Trial Officers setting out what steps have been taken to resolve the issues in dispute and requesting that the case be listed for a directions hearing. Practitioners

are to note that a request for a Directions Hearing must be emailed to the Common Law Registry Pre-Trial Officers and include the following:

- a) The subject of the email should read 'Request for Directions Hearing;
- b) A brief and clear statement as to why a Directions Hearing is being sought;
- c) An estimate of the time required for the Directions Hearing;
- d) An outline of the steps parties have taken to negotiate consent orders and any outstanding matters in contention;
- e) The correspondence requesting the Directions Hearing is to be copied to all other parties to the proceeding and that be apparent from the face of the correspondence;
- f) **IF THE APPLICATION IS URGENT**, the Common Law Registry should be telephoned shortly after the application is emailed. Urgent applications should also be copied to the Associates to the Judge in Charge of the List.

- 35 Issues concerning any aspect of non-compliance, pleadings or particulars, limitations defences, inadequate answers to interrogatories or discovery, duration of trial, the involvement of international and or interstate witnesses, the use of video conference facilities, the need for an expedited hearing, mode or venue of trial and applications for dismissal for want of prosecution can all be dealt with at a Directions Hearings.
- 36 A directions hearing should be requested where a party to the proceeding considers that the proceeding is not progressing appropriately or more intensive supervision is required. All parties to a proceeding have an obligation to ensure that the proceeding is managed in a just efficient timely and cost effective manner to facilitate the resolution of the real issues in dispute in a proceeding, consistent with the demands of justice in accordance with the provisions of the *Civil Procedure Act 2010*.
- 37 The parties are to comply with the Timetabling Orders applicable to the proceeding. Any failure by a party to comply with such an Order the effect of which may be to compromise the ability of the parties to achieve an early resolution in the matter or maintain the trial date fixed for the proceeding should be brought to the attention of the List Judge via a directions hearing.
- 38 Practitioners seeking to vacate a Directions Hearing listed on the next business day, must refer to paragraphs 38 – 40.

Requests to vacate listings, where the scheduled hearing is the next business day

- 39 Parties should forward consent Orders to the Common Law Registry by no later than 12noon on the day before the scheduled Hearing.
- 40 The correspondence is to be marked "Urgent" and once sent, the parties should telephone the Common Law Registry to ensure the correspondence is brought to the attention of the Pre-Trial Officers.
- 41 Correspondence received after 12noon may not be processed and where an adjournment of the scheduled Hearing is sought, the parties are to assume that appearances will be required unless Court Connect reflects otherwise or the parties are advised – by a Pre-Trial Officer or an Associate to a Judge in charge of the List – that appearances are not required.

Interlocutory Disputes

- 42 Ordinarily all interlocutory matters unable to be resolved by negotiation in the Medical List will be raised before the Judge in charge of the List by application to the Common Law Registry or one of the List Associates. In urgent circumstances, or if the Judge in charge of the List is unavailable, application should be made to the Judge in charge of the Common Law Division.
- 43 Ordinarily it will be sufficient for an interlocutory matter to be raised by correspondence to the Judge in charge setting out the nature of the interlocutory matter and the relief sought on notice to the other party. It may be necessary for an interlocutory matter to be supported by affidavit, but only where the party bringing the interlocutory matter considers that the application should

be supported by evidence. The use of a Summons should not be the preferred means of bringing an interlocutory matter to Court, save where some substantive relief is sought which requires formulation of specific relief by reference to the Rules or any relevant enactment.

Impairment Assessment pursuant to the Wrongs Act

- 44 The fixing of a trial date and a timetable to facilitate the maintenance of the trial date is a fundamental plank in the process applied in the List to ensure the efficient management of litigation.
- 45 It is the obligation of all parties to ensure that:
- impairment assessments pursuant to the provisions of the *Wrongs Act 1958* (Wrongs Act); and
 - appeals with respect to the outcome of impairment assessments; are undertaken at a time which will facilitate the maintenance of the trial date.
- 46 In complying with this obligation, practitioners must take into account the entitlement of parties to have access to the appeal process as set out in the *Wrongs Act*.
- 47 It follows that impairment assessments should be undertaken as early as possible in the litigation process. That is not to say however that such assessments are to be considered as being a prerequisite to the commencement of proceedings.

Pleadings

- 48 Pleadings are important in identifying, defining and limiting the issues to be tried. The Rules of Court require the parties to deliver properly particularised pleadings which are designed to elucidate the issues in dispute. The objective that is sought to be achieved within the List is that by the close of the pleadings all parties will have a reasonable understanding of the facts in issue.

The Statement of Claim

- 49 It is expected that all statements of claim will set out precisely the facts relied upon so as to clearly identify the issues in dispute. Allegations of fact should be specifically pleaded. For example, the practice of making a general pleading of negligence supported by the particulars should be avoided.

The Defence

- 50 The defence should respond specifically to each pleading. A general denial of a pleading is generally not acceptable in circumstances in which the defendant intends to adduce evidence to establish a position contrary to that which is pleaded.
- 51 Where the defence raises the *Limitation of Actions Act 1958* the parties to the proceeding may request a directions hearing for the purpose of determining whether the issue may be determined as a preliminary point. If required, Orders will be made to enable a Judge sitting alone to consider the limitation issue raised and to determine that issue in isolation as a preliminary step in the proceeding (see the standard Orders set out in Schedule 2).
- 52 Where the defence raises the *Limitations of Actions Act 1958* the party taking the defence must, as soon as possible after the service of the defence, make application to the Judge in charge of the list for a Directions Hearing for the purpose of determining the way in which the defence should be dealt with and in particular whether the issue may be determined as a preliminary point.
- 53 If required, orders will be made to enable a Judge sitting alone to consider the limitation issue raised and to determine that issue in isolation as a preliminary step in the proceeding (see the standard orders set out in Schedule 2).

Discovery and Interrogatories

- 54 Leave for discovery will ordinarily be granted.
- 55 With discovery of documents, the objective is to ensure that the procedure allows each party access to documents in circumstances where the absence of discovery would not permit justice to be done between the parties.
- 56 Generally, the Court will not participate in the process of approving lists of discoverable documents. It is the responsibility of the parties to prepare a discovery list. This is a useful process with which most practitioners are now familiar and the parties may continue to find it the best way of describing the degree of discovery, which in a particular case is to be regarded as "reasonable". Where the parties agree that discovery will be made in accordance with a Schedule of Documents the Court's Order will merely note the fact of this agreement.
- 57 As a guide to practitioners, the following may be of assistance:
- Where liability is in issue, discovery of treatment records, diagnostic and investigative materials and reports, hospital records will generally be permitted. Discovery of material relevant to quantum such as invoices, accounts, notices of taxation assessment and taxation returns and other documents of that type will be permitted.
 - Where liability is admitted, discovery of material relevant to quantum, as above will generally be permitted.
- 58 Leave to interrogate will ordinarily be granted.
- 59 Draft interrogatories should be prepared by the party interrogating and be served upon the party from whom answers are required. Interrogation as to the following will, generally not be allowed:
- as to evidentiary matters (as distinct from issues arising from the pleadings), see Order 30.07(2)(c);
 - as to identity of persons who may be witnesses, see Order 30.07(2)(c);
 - as to matters which are, or should be, the subject of medical reports and particulars of special damage or loss of earnings and loss of earning capacity.
- 60 Upon receipt of draft interrogatories the party being interrogated should within fourteen (14) days advise the interrogating party whether there is any objection to any of the interrogatories that have been administered, setting out the grounds for each such objection.
- 61 In circumstances in which an objection is raised, the interrogatories together with the letter setting out the objection are to be submitted to the Court by the interrogating party within seven (7) days of receiving the objection from the party being interrogated.
- 62 The Judge will scrutinise the interrogatories and will either authorise the interrogatories, or if it is considered appropriate suggest alterations to the interrogatories.
- 63 The suggested alterations may be accepted by the interrogating party who would then submit the interrogatories in their altered form to the party being interrogated.
- 64 Upon the completion of the process in paragraphs 57 – 59, the parties may apply to the Judge to be further heard as to the form of the interrogatories or the obligation to provide answers.
- 65 Wherever there is a dispute about discovery or interrogatories, parties should attempt to resolve any differences prior to approaching the Court with a request for a directions hearing.
- 66 The Court will therefore only list a dispute over discovery or interrogatories for a directions hearing where the parties have set out the steps they have taken in good faith to resolve the issues in dispute between them.

Exchange of medical and expert Reports and Special Damages

- 67 It is the common feature of virtually all matters within the List that the content of expert reports will assume fundamental importance in determining the outcome of the proceedings, whether such reports deal with issues as to:
- the adequacy of medical management; or
 - the outcome which might have been achieved had an alternative regime of management been introduced; or
 - the quantification of damages.
- 68 Standard Order 9 within the Standard Timetable Orders fixes the date by which there is to be a mutual exchange between the parties of Medical and Expert Reports. The plaintiff's Special Damages are also to be served at this time.

Mediation

- 69 All proceedings within the List will be subject to Mediation. The parties must conduct the Mediation in accordance with the procedures as set out in the Common Law Division Practice Note (PNCLD 3-2017).
- 70 It is important that alternative dispute resolution be conducted at the appropriate stage in each proceeding. As a general proposition, the parties and the practitioners are best able to gauge when it is appropriate to subject a particular proceeding to this process and the precise timing of the Mediation is left to the parties.
- 71 The Court, when allocating a Trial date on receipt of proposed Timetabling Orders, will allocate a date by which the parties are to mediate as being no later than two (2) months prior to the trial date. This timing has been chosen with the aim of allowing the parties to assemble and exchange all relevant evidence necessary to properly identify and evaluate the issues which arise, while occurring early enough before trial to give parties an incentive to settle so as to save incurring the additional expense of preparation for trial.
- 72 It is essential that Mediations are conducted at a time when the parties have served the expert evidence upon which they rely, so that informed decisions may be made by each party as to:
- the merit of their respective positions as to liability; and
 - the potential quantification of the damages.
- 73 It follows that, in the absence of the parties agreeing otherwise, Mediations should be conducted at a time at which the parties have served the relevant expert evidence upon which they rely so that informed decisions may be made by the parties as to the strengths and weaknesses of their respective positions.
- 74 The parties must conduct the Mediation in accordance with the procedures as set out in the Common Law Division Practice Note (PNCLD 3-2017). The Court will enforce the reasonable and usual understanding of that process if a dispute arises between the parties. The parties should also refer to Rule 50.07 of the Rules and s.47A of the *County Court Act 1958*.
- 75 Should the matter:
- a) fail to settle at Mediation: the parties are to ensure a directions hearing is fixed within twenty-one (21) days of the Mediation;
 - b) settle at Mediation: the parties must notify the Court within fourteen (14) days in accordance with paragraph 93.

Exchange of Further Expert Reports

- 76 Standard Order 14 within the Standard Timetable Orders allows for the service of post-Mediation reports within 28 days of the trial date and is intended to deal with the exceptional circumstance in which an issue arises at, or after Mediation, requiring the parties to clarify any expert opinion exchanged prior to Mediation by requesting the relevant expert to opine further as to some specific issue.

- 77 In the absence of consent by all parties or by Order of the court, Standard Order 14 is not to be employed by a party to:
- a) introduce reports from experts who have not previously opined, or
 - b) allow a party to recast or augment its case by the introduction of wholly new material.

Case Conference

- 78 Orders may be made for a Case Conference prior to or instead of a Mediation where the parties seek that course, and satisfy the Judge that it is appropriate to proceed in that way.
- 79 The parties themselves, or a representative of a corporate party with authority to settle the proceeding, must attend the Case Conference. The parties may be ordered, in advance of the conference, to file and serve a position paper of 2 or 3 pages discussing the issues of fact and law raised in the case and a party may be required to produce copies of relevant documents relating to issues of liability and/or quantum.
- 80 The Case Conference will be conducted by a Judge. The Judge will expect that those appearing at the conference (a litigant in person, a member of counsel or a solicitor) will be familiar with the case.
- 81 The objectives of the Case Conference are to settle the action, or if this is not possible, to refine the issues and to determine the most appropriate interlocutory steps to bring the matter quickly to trial.

Joint hearing or consolidation of proceedings

- 82 Wherever possible, it is desirable that proceedings concerning common questions of fact or law or arising out of the same circumstances be heard and determined together. In such cases, the parties can request that the proceedings be listed for the same administrative mention date so that they can consult one another about appropriate timetabling Orders.
- 83 Proceedings will be listed together upon request when a trial date and timetabling Orders are being sought. Requests to list proceedings together require the written consent of all parties in each proceeding. Separate setting down for trial fees and Jury fees (where applicable) will be payable in each proceeding.
- 84 Where parties seek consolidation of proceedings, they should consider which pleadings are to stand as the pleadings in the consolidated proceeding, or whether new pleadings should be filed. The parties should also identify who will be the parties in the consolidated proceeding. Once an Order for consolidation is made, one of the proceedings will be struck out, and thereafter only one setting down for trial fee and jury fee (if applicable) will be payable.

Setting Down For Trial Fee

- 85 Orders that a proceeding be set down for trial will be accompanied by a requirement to pay the setting down for trial fee. A setting down for trial fee will be payable, generally 4 to 6 weeks after Timetable Orders are made. A party may apply to Registry for waiver of this fee on the ground of financial hardship.
- 86 Hearing dates will automatically be vacated and a directions hearing automatically listed where the setting down for trial fee is not paid.
- 87 In the event this occurs, prompt application for reinstatement may result in refixing on the same hearing date (where that date is still available).

Jury Fees

- 88 Practitioners are directed to Order 47 of the Rules and to s.24(5) of the *Juries Act 2000*. Where a party has requested trial by jury, that party is required to pay the first day's jury fees usually

no later than 21 days prior to the trial date. Where the prescribed fee is not paid by the required date, the case will proceed as a cause unless the Court otherwise orders.

Vacation of Trial Dates

- 89 If a trial date needs to be vacated, an application to vacate the trial date should be made in writing to the Common Law Registry at the earliest opportunity and set out the reasons for the need to vacate the trial date. Only in exceptional circumstances should such an application be made within thirty (30) days of trial.
- 90 Upon receipt of the application, the Judge in charge of the List will determine whether the application should be granted and whether:
- a) affidavits in support of the application are required; and/or
 - b) the application is to be listed for a Directions Hearing before the Judge in charge of the List.
- 91 Where trial dates are vacated at the request of parties and are refixed for hearing on alternative dates, a fresh setting down for trial fee will generally be payable. A party may apply to Registry for waiver of this fee on the ground of financial hardship.

Ceasing to Act

- 92 If a case is set down for trial and a practitioner is seeking leave to file a Notice of Ceasing to Act, the application must be made at the earliest opportunity as otherwise the practitioner may not be released from their obligations.

Settlements

- 93 If an action resolves, the Court should be informed at the earliest opportunity to enable hearing dates to be backfilled in order to maximise the use of judicial resources.
- 94 Orders can be made ‘on the papers’ striking out or dismissing cases by consent and for other Orders sought (for example, for costs) provided the consent of all parties is provided.
- 95 Pursuant to Rule 59.06 of the Rules of the Court, the plaintiff must within fourteen (14) days of the settlement of a proceeding file with the registry of the court a draft Order signed by all the parties consenting to the dismissal of the proceedings.
- 96 **Where a proceeding has settled as the result of a Mediation**, the plaintiff is to notify the court of that fact by filing an Order headed “Mediation Result Order” which contains the particulars set out in the Standard Mediation Result Order in Schedule 3. This requirement is reflected in Order 12 of the Standard Timetable Orders.
- 97 If it is intended to file a Notice of Discontinuance, parties are reminded that the consent of all parties or the leave of the Court is required if this is done after pleadings have closed. A Notice of Discontinuance must be filed with the Registry. Practitioners should ensure that applications for Orders ‘on the papers’ disposing of a proceeding clearly set out what is proposed in the event that there is a counterclaim or third party proceedings and are consented to by all parties to the proceeding.

Applications for approval of compromise

- 98 All applications for approval of compromise of proceedings in the Medical List prior to the commencement of the trial of a proceeding should be made by Affidavit to the Judge in charge of the List.
- 99 After the commencement of a trial, an application for approval of a compromise may, subject to any Order or direction of the trial judge to the contrary, be made on affidavit or if so directed, orally, to the trial judge. If it is inappropriate for the trial judge to hear and determine the

application for approval of a compromise, such application should be made to the Judge in charge of the List.

- 100 Further directions on the content and form of applications for approval of compromise can be found at paragraphs 38-40 of the Common Law Division Practice Note “Operation of Lists and Management of Proceedings within the Common Law Division (PNCLD 2-2018)”. Practitioners must comply with those directions in making any application within the Medical List.

Applications for extension of time for service of Writs

- 101 Ordinarily, a Writ must be served within twelve months of the date of issue. All applications for extensions of time for service of a Writ should be made to the Judge in charge of the List, upon affidavit. The affidavit must establish a good reason to extend the period of validity of a writ. Ordinarily the application will be dealt with ‘on the papers’. Should the Court determine that the defendant ought to be heard a Directions Hearing shall be allocated with the requirement that the defendant be informed and be given an opportunity to be heard.
- 102 Such applications are to be made to the Common Law Registry and will then be brought to the attention of the Judge in Charge of the List.

SCHEDULE 1**Standard Timetable Orders for the Medical List – Common Law Division**

Below is a list of standard Orders for the Common Law Division - Medical List. Practitioners wishing to have matters dealt with 'on the papers' are invited to refer to these standard Orders when preparing minutes of consent. Where the parties require an Order which fixes an initial Timetable which is to take effect in accordance with paragraph 25, the proposed consent Orders filed by the parties must be headed: "**Initial Timetable Order which takes effect THREE DAYS after Filing**".

Timetable Orders

In complying with these Orders, the conduct of the parties is governed by the provisions of the Medical List Practice Note No PNCL-ML 1-2015.

- 1) The proceeding is set down for trial on (date) as a (Cause/Jury) (estimate (number) days).
- 2) The plaintiff is to pay the setting down for trial fee on or before (date). In default, the defendant may pay the fee within a further 21 days. If the fee is not paid the trial date will be vacated.
- 3) Any application to vacate the trial date is to be made at least 28 prior to the trial date to the Judge in charge of the Medical List or, if the List Judge is unavailable, to the Judge in charge of the Common Law Division.
- 4) (If jury) By 4:00 pm on (date) the (party) is to pay the jury fee. In default, any other party may pay the fee within a further 14 days. If the fee is not paid, the trial will proceed as a Cause.
- 5) The parties are to cooperate in completing the interlocutory processes in accordance with the Rules of the Court so that the action is brought to trial as quickly as possible.
- 6) By the parties have leave to serve any Notice of Discovery on each other.
- 7) By 4:00 pm on (date) the party served with a Notice for Discovery must make discovery (including full inspection) of the following documents:
 - a) each document referred to in the party's pleadings or the particulars of the pleadings;
 - b) any document which may be produced by the party during evidence at the trial;
 - c) any document which may harm the party's case;
 - d) any document or class of documents which any other party reasonably requests the party to discover.
- 8) The parties have leave to serve Interrogatories for the examination of each other by (date).
- 9) By 4:00 pm on (date):
 - a) the parties are to exchange any medical and/or expert reports concerning damages and liability;
 - b) the plaintiff is to serve particulars of special damage, loss of earnings and loss of earning capacity along with supporting documentation.
- 10) By (date), the parties are to mediate the dispute. Those persons with the authority to settle the proceeding and the terms of the settlement together with the lawyers who have the ultimate responsibility to advise the parties in respect of the proceeding and its settlement shall attend the Mediation.
- 11) Should the matter fail to settle at Mediation the matter is to be the subject of a directions hearing on (date – within twenty-one (21) days of the Mediation date).
- 12) Should the matter settle at Mediation, the parties must file Notice with the Court within fourteen (14) days, in the form of the Standard Order set out in Schedule 3 of the Medical List Practice Note No PNCL-ML 1-2015.
- 13) Any subpoena under Order 42A is to be issued by (date).
- 14) Should the parties wish to exchange further medical and/or expert reports concerning damages or liability after the Mediation, such reports along with supporting documentation are to be exchanged:
 - a) in accordance with paragraphs 73 – 74 of the Medical List Practice Note PNCL-ML 1-2015; and
 - b) no later than 28 days before the trial date.
- 15) No later than 28 days before the trial date the plaintiff is to serve any final particulars of special damages, loss of earnings and loss of earning capacity.
- 16) Court Books must be prepared by the parties (either jointly or separately), served 7 days prior to trial, and filed at the commencement of the trial with the Judge's Associate.
- 17) Liberty to apply to the Judge in charge of the Medical List for further directions upon reasonable notice to all other parties.
- 18) Costs reserved.

SCHEDULE 2**Standard Orders for an application seeking an extension of time
within which to commence a proceeding
(where a defence raises the *Limitations of Actions Act 1958*)**

- 1) By 4.00 pm on (date) any Summons by the plaintiff for an extension of time within which to commence a proceeding (the application), pursuant to the *Limitation of Actions Act 1958* be issued.
- 2) That the limitation issue raised by the Defence of the defendant(s) (the issue) be tried by a Judge sitting alone on (date) with a trial estimate of (#) days.
- 3) By 4.00 pm on (date) any affidavit by or on behalf of the plaintiff be sworn, filed and served on the defendant(s).
- 4) By 4.00 pm on (date) any affidavit by or on behalf of the defendant(s) be sworn, filed and served on the plaintiff.
- 5) By 4.00 pm on (date) any further affidavit by or on behalf of any party be sworn, filed and served on all other parties.
- 6) Subject to any Order of the Trial Judge, the trial of the application/issue be by affidavit.
- 7) Any party intending to cross examine the deponent of any opposing affidavit shall give notice in writing of such intention to the solicitor for the party on whose behalf the affidavit was filed not less than ten (10) clear days of the date of the hearing of the application.
- 9) Liberty to apply to the Judge in charge of the Medical List for further directions upon reasonable notice to all other parties.

SCHEDULE 3

Standard Mediation Result Order

- 1) This matter was mediated by (Mediator) on (date) and was settled as the result of the Mediation.
- 2) The Directions Hearing of (date of post-mediation Directions Hearing) is:
 - *no longer required and should be vacated; or
 - *to be vacated and re-fixed for an Administrative Mention on (date) to allow time for the parties to finalise Orders dismissing the proceeding.

*Strikethrough as appropriate