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| Common Law Division |
| **Practice note** |

**DOCUMENT CONTROL**

**Details**

|  |  |
| --- | --- |
| **Document type** | Practice note |
| Reference number | PNCLD 2–2020 |
| Division | Common Law |
| Reviewed by | Her Honour Judge Tsalamandris, Head of the Common Law Division |
| Authorised by | Her Honour Judge Tsalamandris, Head of the Common Law Division |
| Notes |  |

**Release history**

|  |  |  |  |
| --- | --- | --- | --- |
| Version | Date | Author | Summary of changes |
| The release history only captures versions from 2020 onwards. | | | |
| 1.0 | 01/07/2020 | Judge Tsalamandris | Supersedes Reference No. PNCLD 2–2018 |

**Related documents**

|  |  |
| --- | --- |
| Document title | Version |
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Overview

Rule 34A of the *County Court Civil Procedure Rules* 2008 (Vic) (“the Rules”) provides a framework for the management of all civil litigation by the Court. Civil litigation is managed in two Divisions: the Common Law Division and the Commercial Division.

The Common Law Division (“the Division”) has been established by Order 34A of the *County Court Civil Procedure Rules* 2018 and the *County Court Miscellaneous Rules* 2009 (“the Rules”).

This practice note is the principal practice note providing guidance to practitioners and parties in the conduct of proceedings commenced in the Common Law Division. There are a number of other practice notes which deal with specific and discrete areas of practice within the Division. They must be read in the context of this principal practice note.

Aim of the County Court in civil litigation

The aim of the County Court in civil litigation is to list, hear and determine cases quickly and cost-effectively, consistent with the demands of justice and, in particular, with the requirements of the *Civil Procedure Act* 2010.

In particular, the parties:

* + 1. for the purpose of avoiding undue delay and expense, must not take any step unless that party reasonably believes that step is necessary to facilitate a resolution or determination of any application or trial;
    2. must co-operate with the Court in order to bring about the efficient conduct and disposal of the application or trial;
    3. must use every reasonable endeavour to reduce or resolve the issues in dispute;
    4. must ensure that every reasonable endeavour is undertaken to ensure the costs incurred are proportionate to the complexity and importance of the issues in dispute and the amount in dispute;
    5. must use reasonable endeavours to act promptly and minimise delay; and
    6. have an obligation to disclose any document in their possession or control to the other party at the earliest reasonable time.

## Parties expected to co-operate

At all times, the parties are expected to co-operate in the resolution of interlocutory matters so as to minimise the need for the Court’s intervention prior to trial. In particular, parties are expected to sensibly respond to each other’s enquiries regarding consent orders.

Certification Requirements of the *Civil Procedure Act* 2010

Part 4.1 of the *Civil Procedure Act* 2010 requires the parties to civil litigation to certify that the party has read and understood the overarching obligations and the paramount duty, and to file a proper basis certification.[[1]](#footnote-1)

Although the failure to provide certification may not prevent the commencement of proceedings, the parties should note the Court may take into account any such failure in:

* + 1. determining costs in the proceeding generally;
    2. making any order about the procedural obligations of parties to the civil proceeding; and
    3. making any other order it considers appropriate.[[2]](#footnote-2)

Divisional structure

## Division Lists

The Division is managed through the following Lists:

* + 1. [General List](https://www.countycourt.vic.gov.au/going-court/common-law-division/common-law-division-lists/general-list) - Judge Tsalamandris
    2. [Defamation List](https://www.countycourt.vic.gov.au/going-court/common-law-division/common-law-division-lists/defamation-list) - Judge Smith
    3. [Medical List](https://www.countycourt.vic.gov.au/going-court/common-law-division/common-law-division-lists/medical-list) - Judge Tsalamandris and Judge Pillay
    4. [Applications List](https://www.countycourt.vic.gov.au/going-court/common-law-division/common-law-division-lists/family-property-list) - Judge Tsalamandris
    5. [Family Property List](https://www.countycourt.vic.gov.au/going-court/common-law-division/common-law-division-lists/workcover-list) - Judge Kings
    6. [WorkCover List](https://www.countycourt.vic.gov.au/going-court/common-law-division/common-law-division-lists/workcover-list) - Judge Wischusen
    7. [Serious Injury List](https://www.countycourt.vic.gov.au/going-court/common-law-division/common-law-division-lists/serious-injury-list) - Judge Tsalamandris
    8. [Confiscation List](https://www.countycourt.vic.gov.au/going-court/common-law-division/common-law-division-lists/confiscation-list) - Judge Dyer
    9. [Adoptions, Surrogacy and Name changes List](https://www.countycourt.vic.gov.au/going-court/common-law-division/common-law-division-lists/adoptions-surrogacy-and-name-changes-list) - Judge Davis
    10. Appeals, and Post Sentence Applications List - Judge O’Neill.

Practice notes

## Divisional practice notes

The arrangements and expectations of the Division are detailed in a number of practice notes. The parties must identify the relevant practice note to understand the way in which particular litigation is to be conducted. In addition to this principal Common Law practice note, the divisional practice notes are:

* + 1. List practice notes:
       1. [Confiscation](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=confiscation%20list&filters%5bdivision%5d=1)
       2. [Family Property](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=family%20property%20list&filters%5bdivision%5d=1)
       3. [Medical](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=medical%20list&filters%5bdivision%5d=1)
       4. [Serious Injury](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=Serious%20injury%20applications&filters%5bdivision%5d=1)
       5. [WorkCover](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=WorkCover%20List&filters%5bdivision%5d=1)
       6. Adoptions and Parentage;[[3]](#footnote-3)
    2. Other practice notes:
       1. [Applications for approval of compromise](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=compromise&filters%5bdivision%5d=1)
       2. [Applications for supervision orders under the Serious Offenders Act](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=Applications%20for%20supervision%20orders%20under%20the%20Serious%20Offenders%20Act&filters%5bdivision%5d=1)
       3. [Family violence protection and personal safety intervention order appeals](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=Family%20Violence%20Protection%20and%20Personal%20Safety%20Intervention%20Order%20appeals&filters%5bdivision%5d=1)
       4. [Applications for compensation under section 85B of the *Sentencing Act* 1991](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=Applications%20for%20compensation&filters%5bdivision%5d=1)
       5. [Self-represented litigation](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=Self-represented%20litigation&filters%5bdivision%5d=1)
       6. [Application by solicitor for costs in work injury damages claims](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=Applications%20by%20a%20solicitor%20for%20costs&filters%5bdivision%5d=1)
       7. [Suppression, pseudonym (and like) order applications](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=Applications%20for%20suppression,%20pseudonym%20(and%20like)%20orders&filters%5bdivision%5d=1)
       8. [Judicial mediation](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=Judicial%20mediation&filters%5bdivision%5d=1)
       9. [Information Technology](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=information%20technology&filters%5bdivision%5d=1)
       10. [Applications to file a notice of ceasing to act](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=Applications%20to%20file%20a%20notice%20of%20ceasing%20to%20act&filters%5bdivision%5d=1)
       11. [Applications to take evidence by deposition](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=Applications%20to%20take%20evidence%20by%20deposition&filters%5bdivision%5d=1)
       12. [Subpoenas](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=management%20of%20subpoenas&filters%5bdivision%5d=1).

Communication with the Court

## Email

Email is the preferred form of communication with the Court, and the following protocols must be followed:

* + 1. emails are to be sent to the appropriate addressees. practice notes relating to particular lists will indicate the appropriate email address. In the event of uncertainty, practitioners should view the County Court website or contact the Court by phone to confirm the correct address;
    2. emails should maintain the same level of formality expected of all communication with the Court;
    3. unless the communication concerns an application to be made without notice, emails are to be copied to all parties to the proceeding; and
    4. emails, like any other correspondence with the Court, are not the appropriate forum for raising contentious issues, unless the Court has invited written submissions via email.

Wigs

If the presiding Judge wears a wig, counsel are also to wear a wig. In the event that the presiding Judge does not wear a wig, wigs are not to be worn by counsel.

Enquiries about whether counsel ought to be wigged should be directed to the Judge’s Associate via phone or email.

Issue of proceedings

## E-filing

CITEC is the portal which solicitors must use when filing documents electronically.

The initiating process and all subsequent documents filed in a proceeding, including all documents filed in interlocutory applications, must be e-filed, excepting the following items:

* + 1. ex parte applications
    2. Confiscation List applications
    3. approval of compromise
    4. application for directions hearing
    5. eCourtBooks
    6. consent orders.

With the exception of self-represented litigants, documents filed in the Court are to be eFiled. See [Civil eFiling](https://www.countycourt.vic.gov.au/efiling) on the County Court website for more information.

## Division and List nomination

When a proceeding is issued, the plaintiff’s practitioner is to nominate the Division and List that the proceeding is to be entered, specifying the principal cause of action.

Unless a further order is made by the Court, the proceeding will remain in that Division and List until it is determined or otherwise finalised. The Judge in charge of the Common Law Division may order a proceeding be removed to another List if, in his or her view, that proceeding would be more appropriately dealt with in another List or another Division.

Within the General List, there are the following causes of action subcategories, the most relevant of which should be nominated by the plaintiff’s practitioner:

* + 1. Personal Injury – Assault
    2. Personal Injury – Dog Bite
    3. Personal Injury – Industrial Accident
    4. Personal Injury – Motor Vehicle Accident
    5. Personal Injury – Product Liability
    6. Personal Injury – Sexual Assault
    7. Personal Injury – School Accident
    8. Personal Injury – Slipping/Occupiers Liability
    9. Personal Injury – Other
    10. Damages (other than death or personal injury)
    11. Disability Claim Rejection
    12. Professional Negligence
    13. Property Damage
    14. Public Liability
    15. Seamen’s Compensation
    16. Section 138 *Accident Compensation Act* 1985 – Indemnity (injury prior to 1 July 2014)
    17. Section 369 *Workplace Injury Rehabilitation and Compensation Act* 2013 – Indemnity (injury after 1 July 2014)
    18. Trespass
    19. Vehicle Property Damage
    20. Wrongful Dismissal
    21. Workplace Injury
    22. Police Tort Claims
    23. Other.

## Contact details

Under the Rules of Court, practitioners are required to provide an email contact address on all Court documents.[[4]](#footnote-4) Practitioners are expected to monitor the email addresses provided and advise of any change of address by filing a Notice of Change of Email Address with the Court.

Original documents

Civil files and all documents filed in a proceeding are now maintained in electronic format on the Court’s iManage digital file system. Hard copies of filed Court documents are not kept in a physical Court file.

Any original document presented to the Court for filing or handed up in the course of a proceeding will be destroyed or returned to the party. Original documents including affidavits which are scanned and then eFiled with the Court must be retained by practitioners, and made available to the Court if required. Those original documents should be retained by the practitioner at least until the matter and any possible appeal is finalised.

Related proceedings

Wherever possible, it is desirable that proceedings concerning common questions of fact or law arising out of the same incident or injury be heard and determined together. Parties should request that proceedings be listed together when a trial date is being sought.[[5]](#footnote-5) Separate setting down for trial fees and jury fees (where applicable) will be payable in each proceeding.

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 the parties in the consolidated proceeding, and which proceeding number (of the two proceedings being consolidated) the consolidated proceeding will bear. 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 one jury fee will be payable.

Administrative mentions

## The Administrative Mention process

The filing of an appearance will trigger the listing of an administrative mention in most Lists.[[6]](#footnote-6) An administrative mention is a date by which parties are to send consent orders or a request for a directions hearing to the Court. An administrative mention notice will be sent by the Court to the parties.

No appearance is required on the date listed on the administrative mention notice.

The administrative mention notice requires the plaintiff (or his/her legal representative), after consultation with the defendant(s) (or his/her/its/their legal representative), to submit, by the administrative mention date (seven weeks after filing of a notice of appearance), draft consent orders to the Court for the timetabling of the proceeding, to hearing. Parties should submit orders in the form of the [standard orders](http://www.countycourt.vic.gov.au/civil-directions-group) available on the County Court website. The consent orders must be signed by all parties on the record.

## Where parties are not ready to proceed

If the parties are not ready to proceed by the administrative mention date, they should submit consent orders to the Common Law Registry indicating why the matter is not ready, and requesting that the case be listed for further administrative mention.

More than three applications to adjourn the administrative mention in a proceeding without a substantial explanation may result in the proceeding being listed for a directions hearing.

## Where parties cannot agree upon consent orders

Where a plaintiff has sought but has not received a written or verbal response from the defendant(s) to his/her draft consent orders, the plaintiff may request that the matter be listed for a directions hearing. This should be done by email to the Common Law Registry.

Where the defendant(s) neither opposes nor consents, but does not wish to be heard on the matter, the defendant(s) should indicate this to the plaintiff and the Court, so that orders setting the proceeding down for trial can be made without further delay.

## Failure to respond to an Administrative Mention Notice

Failure to respond to an administrative mention notice will result in the listing of a warning administrative mention. Failure to respond to this warning administrative mention will result in the proceeding being struck out.

## Specific timing of Administrative Mentions for police tort claims

Practitioners for plaintiffs issuing police tort claims[[7]](#footnote-7) are required in CITEC to select the “Cause of Action” - “PTC Police Tort Claims” when filing an originating process where the proceeding involves an allegation that a police tort[[8]](#footnote-8) has been committed.

Section 77 of the *Victorian Police Act* 2013 provides that the time for the service of a defence in a police tort claim is sixty (60) days, and thus the administrative mention date for such claims will be approximately 120 days after the filing of a notice of appearance.

Timetabling Orders

## Standard timetabling orders

Standard timetabling orders for damages trials, and for applications under section 93 of the *Transport Accident Act* 1986, section 134AB and section 135AC of the *Accident Compensation Act* 1985 and section 335 of the *Workplace Injury Rehabilitation and Compensation Act* 2013 can be found on the Common Law Division page on the County Court website.

For standard timetabling orders in medical negligence matters, practitioners are directed to the [Medical List practice note](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=medical%20list&filters%5bdivision%5d=1) PNCLD 6–2020.

## Setting down for trial fee

The setting down for trial fee is payable six weeks prior to the allocated trial date. If the setting down for trial fee is not paid, the trial will be vacated and a directions hearing date will be allocated.

## Requesting a particular date or a priority listing

Parties seeking a ‘not before date’ for trial should nominate a ‘not before date’ in the timetabling orders and provide detailed reasons for seeking a later date.

## Witness ill, overseas or interstate

Practitioners must advise the Common Law Registry, whether before or after allocation of the trial date, of any particular circumstances which have or will arise so as to ensure that the proceeding is given priority on the date. Such circumstances may include significant health issues of a party, or presence of an interstate or overseas witness. Once notified, the Common Law Registry will allocate the matter to be heard with priority if that is possible.

Limitations defence

Where the defence raises the *Limitation of Actions Act* 1958, and the plaintiff seeks an extension of time from the Court, the plaintiff must issue a summons. This should be issued as soon as possible, as if the application is to be heard and determined as a preliminary point, it is essential that this does not unnecessarily delay the trial date.

If such an application is to be made, the parties should provide proposed minutes of consent orders with proposed orders in respect of the service of affidavit material and whether cross-examination of any deponent is required. See Schedule 1 for an example of such orders.

Discovery and Interrogatories

In damages cases, leave to interrogate and to discover are generally provided by the standard timetabling orders.

## Discovery

The parties should pay close attention to the *County Court Civil Procedure Rules* 2008 and the provisions of the *Civil Procedure Act* 2010 as to the obligations to discover and produce documents.

In particular, parties should be mindful of their ongoing obligations under section 26 of the *Civil Procedure Act* which requires parties to disclose those documents which are critical to the resolution of the dispute.

## Interrogatories

The number of interrogatories served in proceedings in the Lists within the Division are to be limited to thirty (30) (including sub-parts).

In motor vehicle and industrial accident cases, interrogatories should be confined to questions of liability.

Mediation

Mediation in damages cases will be ordered to occur generally about two months prior to trial. This section of the practice note relating to mediation applies to all lists in the Common Law Division except the Family Property Division, which has its own guidelines.

Mediations should facilitate the “just, efficient, timely and cost-effective resolution of the real issues in dispute”.[[9]](#footnote-9)

## The Court’s mediation procedures

Where the standard mediation order is made, the parties are to abide by the following procedures:

* + 1. The parties are to reach agreement on the date, time and location of the mediation and by whom it is to be conducted. If the parties are unable to reach agreement on these matters after making reasonable attempts to resolve any issues, the parties may request a directions hearing.
    2. Where there is a dispute as to who will conduct the mediation, the parties will each be asked to provide the Court with the names and availability of two preferred mediators.
    3. The parties are to take all necessary steps to ensure that mediation commences on the agreed or appointed date and time. It is expected that by the time of the mediation, the pleadings will be closed and all medical and other expert reports, witness statements and other material which is required to be served prior to trial, will have been provided to the other appropriate party(ies).
    4. The plaintiff is responsible for delivering a copy of all pleadings to the mediator.
    5. Persons with proper authority to settle the dispute and determine the terms of any settlement, and lawyers who have the ultimate responsibility to advise the parties in relation to the dispute and its settlement, must attend the mediation, or, in the case of insurers, be available to confer by telephone.
    6. Persons attending the mediation are to do so with a commitment to negotiating in good faith to resolve the dispute.

All discussions at mediation or a pre-mediation conference are confidential.

If the matter resolves at mediation, the Common Law Registry must be notified at the earliest possible time.

If the dispute does not resolve at mediation, the cost of mediation shall be costs in the cause.

If it is necessary to adjourn a mediation, the parties are expected to file consent orders with the Common Law Registry adjusting the Court timetable.

## Mediations in multiple defendant cases

Where there are:

* + 1. two or more defendants; or
    2. one or more defendants and one or more third party;

in a proceeding, within ten (10) days prior to the date fixed for the mediation, practitioners for those parties shall attend a conference (“the pre-mediation conference”) for the purpose of addressing the issue of the contribution of their respective clients towards resolution of the plaintiff’s claim. There is no requirement for the pre-mediation conference to be conducted by a mediator or facilitator. An insurer for any of the parties shall be present at the pre-mediation conference or available to confer by telephone. The purpose of the pre-mediation conference is to ensure time is not wasted at the mediation while the defendants and, if applicable, any third party, confer as to contribution.

If any of the defendants or third parties do not comply with the requirements of paragraph 15.8., any party shall be at liberty to apply to the Common Law Registry for a directions hearing before the Judicial Registrar of the Division to explain such non-compliance. In the event the Judicial Registrar is of the view paragraph 15.8 has not been complied with, the offending party(ies) should expect sanctions, including as to costs, in accordance with the relevant provisions of the *Civil Procedure Act* 2010.

## Further mediation

The Judge in charge of the Division, the Judicial Registrar or the trial Judge may order further mediation at or just prior to or during the course of a trial in accordance with section 47A of the *County Court Act* 1958 (Vic) and Rule 50.07 of the Rules. At the commencement of a trial, the trial Judge may ask the parties whether resolution of the proceeding would be assisted by a further mediation. A Judicial Registrar of the Division may be available within the Court precincts to conduct a mediation.

In the event that a Judicial Mediation is ordered, the practitioners are directed to the [Judicial Mediation practice note](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=judicial%20mediation&filters%5bdivision%5d=1) PNCLD10–2020.

## Resolution of a proceeding

If a proceeding is resolved, the Common Law Registry must be notified via an email to [commonlaw.registry@countycourt.vic.gov.au](mailto:commonlaw.registry@countycourt.vic.gov.au) at the earliest possible time.

Applications to vacate a trial date

Applications to vacate a trial date should be made in writing to the Common Law Registry. An explanation as to why the trial date should be vacated, must be provided. The application should be made at the earliest opportunity, and, only in exceptional circumstances, less than 28 days prior to the trial date. Applications by consent must be signed by all parties to the proceeding. Where it is not consented to, the party seeking to vacate the trial date must request a Directions Hearing on notice.

## Affidavit

Where the application is made within 28 days prior to the trial date, an affidavit in support must be provided, irrespective of whether the request is by consent.

Interlocutory applications

## Court Appearances

Law graduates who are not yet admitted to practice may appear at directions hearings but must seek leave of the Court.

All persons appearing at directions hearings must be fully briefed on all relevant aspects of the matter so as to be in a position to assist the Court.

If it appears to the Court that the person appearing is not fully briefed on all relevant aspects of the matter, the Court will order the practitioner with the conduct of the file to attend. This may result in a cost order against the practitioner if an extra directions hearing is required.

Parties are required to appear at directions hearings unless otherwise advised by the Court, including matters in which minutes of proposed consent orders have been submitted.

## Summons and Directions Hearings

The Court expects that parties will comply with the Rules and attempt to resolve any interlocutory issues without judicial intervention prior to requesting that a matter be listed for directions hearing.

Unless otherwise provided in this practice note, interlocutory disputes in a Division matter are to be commenced by summons or by written application to the Common Law Registry.

### Summons

Where the Rules require the issue of a summons, the summons is to e-Filed, together with any necessary affidavits in support. Practitioners are to obtain a date and time of hearing from the Common Law Registry prior to e-filing their summons.

### Directions Hearings

For applications not requiring a summons, such as interlocutory applications made under liberty to apply provisions, disputes regarding timetabling orders and other like matters, the application is to be commenced by email to the Common Law Registry.

Where the dispute concerns matters other than non-compliance with Court orders, consideration should be given as to whether an affidavit in support is appropriate and/or necessary, particularly where there is a factual dispute.

Any affidavit material, written submissions or authorities to be relied upon, should be emailed to the Common Law Registry no later than 12 noon on the day before the directions hearing. If this is not complied with, the directions hearing may need to be adjourned, with costs consequences to the party who provides late material.

## Urgent applications

If the application is urgent, the Common Law Registry should be notified at the time the application is lodged. The Common Law Division Judicial Registrar (or alternatively the Judge in charge of the Division) will then be notified, and suitable arrangements for the hearing of the matter will be made.

## Resolution

Confidential Communications - Division 2A of Part II of the *Evidence (Miscellaneous Provisions) Act* 1958

## General

Section 32C of the *Evidence (Miscellaneous Provisions) Act* 1958 (“the *EMP Act*”) provides that the Court must grant leave before a confidential communication is compelled for production or adduced as evidence. Circumstances in which this may arise include, but are not limited to, where:

* + 1. a party issues a subpoena to compel production of a document containing a confidential communication;[[10]](#footnote-10)
    2. a document is produced that may disclose a confidential communication; and/or
    3. evidence is adduced that may disclose a confidential communication or may disclose the contents of the document recording a confidential communication.

Practitioners are expected to be aware of the relevant provisions of Division 2A of the *EMP Act* and the circumstances under which a court must grant leave in relation to confidential communications.

## Personal Injury – Sexual Assault

This part of the practice note has particular application to civil proceedings in which a plaintiff alleges he or she has been the victim of sexual assault, and seeks damages as a consequence. The statement of claim should provide that the proceeding is brought in “the Common Law Division - General List - Personal Injury – Sexual Assault”. Plaintiffs are required in CITEC to select the “Cause of Action” “PIS – Personal Injury-Sexual Assault” when filing the writ.

## Applications for leave to issue a subpoena to produce documents which may contain a confidential communication

This section of the practice note concerns subpoenas which are sought to be issued pursuant to Order 42A of the Rules, directed to a person or institution which is not a party to the proceeding, to produce any document to the Registrar which may contain a confidential communication.

A practitioner who intends to issue such a subpoena must:

* + 1. first obtain a date for the hearing of the application from the Common Law Registry, then file with the Court (utilising the Court’s CITEC filing system):
       1. an application to issue a subpoena or to produce or adduce evidence as to a confidential communication in accordance with Schedule 2 of this practice note;
       2. a draft of the proposed subpoena; and
       3. a brief outline of submissions in support of the application for leave to issue the subpoena;
    2. once the application has been issued by the Court, and a date fixed for hearing, serve upon:
       1. each party to the proceeding; and
       2. the person or institution to whom the subpoena is proposed to be directed, a copy of the application, the draft subpoena and the outline of submissions at least fourteen (14) days prior to the date fixed for the hearing of the application.[[11]](#footnote-11)

The hearing of the application for leave will be conducted by a Judge or Judicial Registrar sitting in the Common Law Division. At the hearing, the Judge or Judicial Registrar may hear from any party or the person or entity to whom it is proposed the subpoena be directed as to whether leave ought be granted, taking into account the matters set forth in sections 32C – 32F of the *EMP Act*.

If leave is granted in accordance with the relevant provisions, the Judge or Judicial Registrar will order leave be granted for the subpoena to be issued for the production of documents returnable before the Registrar.

The same process shall apply in relation to an application to issue a subpoena to produce documents at the hearing of an interlocutory or other application, or at trial, save that the application shall be returnable before the trial Judge at the hearing of the interlocutory or other application, or trial, and shall be served upon the same parties referred to in r42.2(b) above, at least fourteen (14) days prior to the date of hearing of the interlocutory or other application or trial.[[12]](#footnote-12)

## Applications for leave to adduce evidence of, or produce documents which may contain confidential communications at an interlocutory or other application or at trial

If a party seeks at the hearing of an interlocutory or other application, or at trial, to adduce evidence of a confidential communication or to produce a document which may record a confidential communication, that party *must*:

* + 1. file with the Court (utilising the Court’s CITEC filing system):
       1. an Application to issue a subpoena or to produce or adduce evidence as to a confidential communication in accordance with Schedule 2 of this practice note;
       2. a brief outline of the evidence it is proposed to adduce or the document which may record a confidential communication; and
       3. a brief outline of submissions in support of the application;
    2. once the application has been filed with the Court, serve upon:
       1. all other parties to the proceeding; and
       2. the witness who is proposed to adduce evidence or produce documents recording a confidential communication
       3. the application, the outline of the evidence or the documents, and the outline of submissions, at least fourteen (14) days prior to the date of the application or trial.

The trial Judge, in his or her discretion, may grant leave to hear any such application notwithstanding that the relevant documents have not been served fourteen (14) days prior to the application or trial.

The trial Judge shall hear and determine the application in accordance with sections 32D – 32F of the *EMP Act*, and make any appropriate order.

Reserve List

## Civil Reserve List Allocation

All cases listed for trial but which are not allocated to a particular Judge on the day of trial, will be placed in the Common Law Division Reserve List, generally overseen by the Judicial Registrar of the Division.

The Reserve List cases are no longer called over in Court, and instead will be asked to appear via videolink.

Parties who have a case in the Common Law Division Reserve List will receive an email from the Chambers of the Judicial Registrar by 5.00pm the evening before the trial and are to respond to this email by 9.30am on the day of trial. Each party will be asked to advise of the email addresses of counsel appearing, the current estimate for hearing and whether there are any outstanding issues. Parties must ensure that all parties are copied into this correspondence.

In the event that the Judicial Registrar requires parties to attend in person for clarification as to any outstanding issues, Counsel are expected to be available to appear at Court with a minimum of 15 minutes’ notice. Further, if the case is allocated to a trial Judge, Counsel are also expected to be available to appear at Court with a minimum of 15 minutes’ notice.

The parties should advise the associate if their matter settles.

The associate to the Reserve List Judge or Judicial Registrar will contact the parties if a Judge becomes available to hear their matter. If a Judge has not become available by 3.00pm, or earlier at the discretion of the Judge or Judicial Registrar, matters will be marked ‘not reached’ and re-fixed, usually with priority and at the earliest available date. Every effort will be made to have the proceeding or application refixed within three months, depending on the state of the lists, and with priority.

If a proceeding is marked ‘not reached’ in the Civil Reserve List and refixed for trial at a later date, the trial fee already paid will stand as the trial fee for the new date.

Finalisation of a claim

Where proceedings are finalised without adjudication, parties should, as soon as possible after the resolution of the claim, submit consent orders dismissing or striking out the proceeding.

Divisional Contacts for the Registry

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| --- | --- | --- |
| Contact | Email | Telephone/Fax |
| CITEC and General Enquiries | [civil.counter@countycourt.vic.gov.au](mailto:civil.counter@countycourt.vic.gov.au) | T: 03 8636 6888 |
| Common Law Registry | [commonlaw.registry@countycourt.vic.gov.au](mailto:commonlaw.registry@countycourt.vic.gov.au) | T: 03 8636 6515 |
| Melbourne Circuit Team | [circuits@countycourt.vic.gov.au](mailto:circuits@countycourt.vic.gov.au) | T: 03 8636 6404 |
| Self-Represented Litigants | [srl@countycourt.vic.gov.au](mailto:srl@countycourt.vic.gov.au) | T: 03 8636 6508 |
| Subpoenas | [subpoenas@countycourt.vic.gov.au](mailto:subpoenas@countycourt.vic.gov.au) | T: 03 8636 6525 |
| Videolinks | [videolinks@countycourt.vic.gov.au](mailto:videolinks@countycourt.vic.gov.au) | T: 03 8636 6530  F: 03 8636 6400 |
| Approval of compromise email address | [Compromise@countycourt.vic.gov.au](mailto:Compromise@countycourt.vic.gov.au) | T: 03 8636 6515 |
| *Ex parte* applications | [commonlaw.registry@countycourt.vic.gov.au](mailto:commonlaw.registry@countycourt.vic.gov.au) | T: 03 8636 6515 |
| Applications for directions hearings and consent orders | [commonlaw.registry@countycourt.vic.gov.au](mailto:commonlaw.registry@countycourt.vic.gov.au) | T: 03 8636 6515 |

**SCHEDULE 1**

**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 4.00pm 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 4.00pm on (date), any affidavit by or on behalf of the plaintiff be sworn, filed and served on the defendant(s).
4. By 4.00pm on (date), any affidavit by or on behalf of the defendant(s) be sworn, filed and served on the plaintiff.
5. By 4.00pm 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.
8. Liberty to apply to the Court for further directions upon reasonable notice to all other parties.

1. *Civil Procedure Act* 2010, s41(1), s42(1) [↑](#footnote-ref-1)
2. *Civil Procedure Act* 2010, s46 [↑](#footnote-ref-2)
3. This practice note will be updated shortly, after consultation with relevant stakeholders [↑](#footnote-ref-3)
4. *County Court Civil Procedure Rules* 2008, order 27.03(11)(b) [↑](#footnote-ref-4)
5. Sample [list together orders](http://www.countycourt.vic.gov.au/civil-directions-group) are available on the County Court website [↑](#footnote-ref-5)
6. In all Lists but the Confiscation List and the Serious Injury List [↑](#footnote-ref-6)
7. *Victoria Police Act* 2013, Divisions 8 [↑](#footnote-ref-7)
8. As defined in s72 and 73 of the *Victorian Police Act* 2013 [↑](#footnote-ref-8)
9. *Civil Procedure Act* 2010, s7(2)(c)(ii) [↑](#footnote-ref-9)
10. Defined in s32B of the *EMP Act* as “*… a communication, whether oral or written, made in confidence by a person against whom a sexual offence has been, or is alleged to have been committed to a registered medical practitioner or counsellor in the course of the relationship of medical practitioner and patient or counsellor and client, as the case requires, whether before or after the acts constituting the offence occurred or are alleged to have occurred*”. [↑](#footnote-ref-10)
11. Or such other period of notice as the Court orders: Section 32C(3) of the *EMP Act* [↑](#footnote-ref-11)
12. or such other period of notice as the Court orders: Section 32C(3) of the *EMP Act* [↑](#footnote-ref-12)