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| Confiscation List |
| **Practice Note** |

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# Overview

* 1. The purpose of this Practice Note is to provide guidance to practitioners and parties relevant to the conduct of applications commenced in the Confiscation List of the Common Law Division (“the List”).
  2. This Practice Note applies to applications commenced pursuant to the provisions of the *Confiscation Act* 1997 (Vic) and the *Proceeds of Crime Act* 2002 (Cth). The Practice Note must be read in conjunction with the following:
     1. the *Confiscation Regulations* 2019 (Vic), and any successor regulations, and the *Proceeds of Crime Regulations* 2002 (Cth), and any successor regulations;
     2. Order 10 of the *County Court Miscellaneous Rules* 2019 (“the Rules”), and any successor rules;
     3. The Common Law Division Practice Note PNCLD 2–2020 (“the principal practice note”).
  3. The Court recognises that there is a commonality of purpose created by the *Confiscation Act* 1997 and the *Proceeds of Crime Act* 2002, and at the same time recognises that the practices, procedures and the form that applications take will vary. Despite the foregoing, this Practice Note is intended to provide a harmonising of practice for the purpose of creating uniformity as far as that is possible in the manner in which applications are commenced and prosecuted.
  4. Although, applications in the Confiscation List will be case managed through directions hearings, the parties should otherwise pay regard to the practices and procedure referred to in the principal practice note and adopt those practices and procedure referred to in it where relevant for the purpose of the expeditious and cost effective prosecution of proceedings.

# Applications

* 1. Every initiating application commenced under either Act must:
     1. clearly state the basis for the proceeding; and
     2. provide particulars of the grounds upon which the proceedings are based; and
     3. refer to the relevant provisions of the Act which are relied upon; and
     4. set out the orders sought.
  2. As far as is practicable, and as guidance only, the pleading of the initiating application may follow the pleading requirements referred to in Rules 13.02 (1) and (2), and 13.10 (1) and (2) found in the *County Court Civil Procedure Rules* 2018 (“Chapter 1 Rules”) to create a consistency in pleading practice.
  3. Where a response to an initiating application is required, or where the nature of the proceeding calls for a response, the response should provide the same particulars and in be the same form as required of an initiating application.

# *Ex parte* applications

* 1. The Court expects that when an application is made *ex parte* that the applicant will make submissions relevant to why the application should be made *ex parte* rather than on notice to the respondent.
  2. If such an order is made *ex parte*, then the applicant should make every effort to serve the application and a true copy of the order within seven (7) days of the date on which the order is made.

# Affidavits

* 1. The affidavit evidence filed in support, for example of an order to restrain property, can contain evidence which the applicant may consider to be sensitive.
  2. The Court expects that if an order is made *ex parte* restraining property, that after service of the application and the order, that the applicant will give immediate consideration to whether the affidavit can be served in its filed form, or in an appropriately redacted form, or not at all.
  3. Furthermore, the Court expects that the applicant will confer with the respondent’s legal representatives, or if the respondent is unrepresented, then directly with the respondent, to determine whether the affidavit can be served, or some appropriate measures can be taken to inform the respondent of the basis upon which an *ex parte* order was made.
  4. The applicant must at all times be aware of any time limits which restrict the time within which the respondent must make any response to an initiating application and should endeavour to serve the application, the order and the affidavit (where appropriate) in sufficient time for the purpose of the respondent making a considered response before any time limit works against the respondent.

# Notice of address for service

* 1. The Court expects that upon service on the respondent of the initiating application and an order, whether obtained *ex parte* or on notice, that the respondent will file and serve a notice providing the respondent’s contact details. For guidance only, if the respondent intends to contest the application, then the respondent should file and serve a notice of address for service consistent with the notice referred to in Rule 8.06(1)(a) or (b) in the Chapter 1 Rules.
  2. If the respondent’s notice of address for service changes at any time during the currency of the proceeding, then the respondent must expeditiously file and serve an updated notice of address for service.

# Directions hearings

* 1. Directions hearings will be conducted each Tuesday at 9.30am before Judge Dyer, or his nominee.
  2. In current circumstances where court access may be restricted, applications commenced by the Director of Public Prosecutions for the State of Victoria or other persons relating to the *Confiscation Act* 1997 (Vic) will be listed at 9.30am. Applications commenced by the Commissioner of the Australian Federal Police or other persons relating to the *Proceeds of Crime Act* 2002 (Cth) will be listed at 10.30am.
  3. Urgent applications may be listed by contacting:

[confiscation.application@countycourt.vic.gov.au](mailto:confiscation.application@countycourt.vic.gov.au), [confiscationlist@countycourt.vic.gov.au](mailto:confiscationlist@countycourt.vic.gov.au)

* 1. The purpose of a directions hearing is primarily to determine what orders or procedural orders are necessary to advance the initiating application, and any response application or ancillary application, to a trial of the substantial issues raised by the parties. It may be that the number of directions hearings outlined below is unnecessary because of the nature of the application/s. The Court will accommodate the parties, determining what procedural steps are required as between themselves without the necessity to attend this number of directions hearings.
  2. If a party intends to make a substantive application at a directions hearing, then the Court expects that the party making such an application will provide the Court with a short summary of the factual basis for the application, the relevant provisions of the relevant Act on which the application is based, and a short outline of the orders sought. The summary should be emailed to the relevant Judge’s associate the day before the directions hearing.
  3. Ordinarily the application/s will be listed for a first directions hearing. It is anticipated that orders or preliminary procedural orders will be made appropriate to the issues raised by the parties. Save in exceptional circumstances, the application/s will be referred to a second directions hearing.
  4. It is anticipated that at the second directions hearing, further preliminary procedural orders will be made appropriate to what each of the parties must next undertake for the purpose of being ready for trial. Save in exceptional circumstances, the application/s will be referred to a third directions hearing.
  5. It is anticipated that at the third directions hearing, the last procedural orders will be made, and the parties will be provided with a date for trial.
  6. The parties must note that the purpose of the directions hearings is to incrementally ensure that the parties undertake all of the necessary procedural steps in readiness for trial.
  7. The Court strongly encourages the parties to confer at appropriate stages in the currency of the application/s and to draft relevant orders which can be filed with the Judge’s associate, obviating the necessity for the parties to appear at a directions hearing. For the purpose of management of the Directions List, the parties must file the relevant orders no later than 4.00pm on the day before the relevant directions hearing, otherwise the parties must appear at the directions hearing.

# Self-represented litigants

* 1. The Court understands that the Australian Federal Police (“the AFP”) and the Office of Public Prosecutions (“the OPP”) have designed systems to ensure self-represented litigants are informed of the nature of initiating applications, and the steps which self-represented litigants should consider taking in responding to an initiating application, and commencing any response application or ancillary application.
  2. The Court understands the AFP and the OPP have designed systems to ensure self-represented litigants who are serving terms of imprisonment are likewise informed of the nature of initiating applications, and the steps which self-represented litigants should consider taking in responding to an initiating application, and commencing any response application or ancillary application.
  3. The Court expects that the AFP and the OPP will inform the Court of what steps have been taken to give such information to self-represented litigants, and in particular, self-represented litigants who are serving a term of imprisonment, for the purpose of assisting the Court in discharging its obligation to ensure that self-represented litigants are afforded procedural fairness. That can be undertaken orally at a directions hearing.

# The substantive trial

* 1. The Court expects that the parties will comply with the requirements set out in the principal practice note relevant to the provision of e-filed Court books.

# Contact details

* 1. Registry Officer Confiscations

Telephone: 8636 6515

* 1. New applications must be filed in Word format with a digital signature. New applications and documents are to be filed at [confiscation.application@countycourt.vic.gov.au](mailto:confiscation.application@countycourt.vic.gov.au).
  2. Correspondence for the Judge, including case summaries and consent orders, are to be filed at [confiscationlist@countycourt.vic.gov.au](mailto:confiscationlist@countycourt.vic.gov.au).