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

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# Overview

* 1. 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.
  2. 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”).
  3. 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

* 1. 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*.
  2. 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 cooperate 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 cooperate

* 1. At all times, the parties are expected to cooperate 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*

* 1. 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)
  2. 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

* 1. 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 Clayton
     3. [Medical List](https://www.countycourt.vic.gov.au/going-court/common-law-division/common-law-division-lists/medical-list) – 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 Tran
     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](https://www.countycourt.vic.gov.au/going-court/common-law-division/common-law-division-lists/appeals-and-post-sentence-application-list) – Judge Hinchey

# Practice notes

## Divisional practice notes

* 1. 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](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=adoptions,%20surrogacy&filters%5bdivision%5d=1);
     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

* 1. 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

* 1. If the presiding Judge wears a wig, counsel are also required to wear a wig. In the event that the presiding Judge does not wear a wig, wigs are not required to be worn by counsel.
  2. Enquiries about whether counsel are required to be wigged should be directed to the Judge’s Associate via phone or email.

# Issue of proceedings

## eFiling

* 1. CITEC is the portal which solicitors must use when filing documents electronically.
  2. The initiating process and all subsequent documents filed in a proceeding, including all documents filed in interlocutory applications, must be eFiled, excepting the following items:
     1. ex parte applications
     2. Confiscation List applications
     3. approval of compromise
     4. request for directions hearing
     5. eCourtBooks
     6. consent orders.
  3. 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

* 1. 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.
  2. 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.
  3. 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

* 1. Under the Rules of Court, practitioners are required to provide an email contact address on all Court documents.[[3]](#footnote-3) 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

* 1. 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.
  2. 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

* 1. 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.[[4]](#footnote-4) Separate setting down for trial fees and jury fees (where applicable) will be payable in each proceeding.
  2. 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

* 1. An administrative mention is a date by which parties are to send proposed consent orders or a request for a directions hearing to the Court.
  2. No appearance is required at an administrative mention.
  3. In most Lists,[[5]](#footnote-5) the filing of an appearance will trigger the listing of an administrative mention. By the administrative mention date, (seven weeks after filing of a notice of appearance), the parties must submit proposed consent orders for the timetabling of the proceeding to hearing. The proposed consent orders must be signed by all parties on the record.

## Where parties are not ready to proceed

* 1. If the parties are not ready to proceed by the administrative mention date, they must submit consent minutes to the Common Law Registry indicating why the matter is not ready, and request the matter be listed for further administrative mention.
  2. More than three requests to adjourn the administrative mention without a substantial explanation may result in the proceeding being listed for a directions hearing.

## Where parties cannot agree on consent orders

* 1. If a plaintiff has sought but not received a response from the defendant(s) in relation to draft consent orders, the plaintiff should request that the matter be listed for a directions hearing by completing a [Directions Hearing application form](https://www.countycourt.vic.gov.au/going-court/common-law-division/request-hearing) which is to be emailed to the Common Law Registry at [commonlaw.registry@countycourt.vic.gov.au](mailto:commonlaw.registry@countycourt.vic.gov.au).
  2. 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.
  3. Failure to respond to an administrative mention will result in the proceeding being struck out.

## Specific timing of administrative mentions for police tort claims

* 1. Practitioners for plaintiffs issuing police tort claims[[6]](#footnote-6) 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[[7]](#footnote-7) has been committed.
  2. 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 eighty (80) days after the filing of a notice of appearance.

## Post-mediation administrative mention in General List proceedings

* 1. In the General List, a post mediation administrative mention will be listed before the Duty Judge two weeks after the parties are to have completed mediation.
  2. Prior to the post mediation administrative mention, the plaintiff must email the Common Law Duty Judge chambers at [commonlawdutyjudge@countycourt.vic.gov.au](mailto:commonlawdutyjudge@countycourt.vic.gov.au) and confirm:
     1. whether the Court ordered timetable has been complied with;
     2. whether the proceeding is ready for trial;
     3. an updated estimate of the length of the trial.
  3. If a matter settled at or after mediation but the parties require further time to finalise the settlement agreement, they should request that the post mediation administrative mention be adjourned for a short period. The trial date will be maintained until otherwise ordered by the Court.

# Timetabling orders

## Standard timetabling orders

* 1. The Court encourages the parties to file consent orders for a timetable which is realistic and appropriate to their case, so as to minimise delay and avoid unnecessary vacation of the trial date.
  2. The Court is able to provide a trial date 10 months or 12 months from the date consent orders are processed.
  3. For standard timetabling orders for proceedings in the General list, see schedule 1A (for a trial date listed 10 months in advance) and schedule 1B (for a trial date listed 12 months in advance).
  4. It is for the parties to determine whether the 10-month or 12-month trial listing is most appropriate. It may be that the period of 12 months is more appropriate in cases where, for example:
     1. the proceeding has multiple defendants;
     2. the claim is brought under the *Wrongs Act* 1958 and significant injury has not been determined at the time of timetabling orders being made.
  5. Consent orders should only state the following:
     1. whether a 10-month or 12-month trial date is sought;
     2. whether the proceeding is to be heard before a judge alone or before a jury;
     3. estimated duration of trial.
  6. It is no longer necessary for the parties to complete the order dates referred to in schedules 1A and 1B. These dates will be automatically allocated, based on the given trial date.

In the event that parties require a variation to the standard timetabling orders as set out in either of the Schedules, the parties should explain in an email the reasons for the variation sought and enclose proposed consent orders with the alternate timetable.

* 1. 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.
  2. For standard timetabling orders in family property matters, practitioners are directed to the [Family Property List](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=family%20property&filters%5bdivision%5d=1) practice note PNCLD 3-2021.

## Setting down for trial fee

* 1. The setting down for trial fee is payable nine weeks prior to the allocated trial date. If the setting down for trial fee is not paid, the trial will be vacated and an administrative mention date will be allocated.

## Witness ill, overseas or interstate

* 1. Practitioners must advise the Common Law Registry as soon as they become aware of any circumstances which may require the proceeding being given priority on the listed trial date. Such circumstances may include significant health issues of a party, or the availability of an interstate or overseas witness. The Common Law Registry will allocate the matter to be heard with priority if that is possible.

# Limitations defence

* 1. Where a plaintiff wishes to make an application for an extension of the limitation period pursuant to the *Limitation of Actions Act* *1958*, such application must be made on summons with affidavit material in support. Any such application should be issued as soon as possible, to ensure that the trial date can be maintained.
  2. If such an application is made, the parties should provide proposed consent orders setting out the timetable for service of affidavit material and submissions. Each party must notify the other party and the Court as to whether any deponent is required to attend for cross examination. See Schedule 2 for an example of such orders.

# Impairment assessment pursuant to the *Wrongs Act 1958*

* 1. It is the obligation of all parties to ensure that:
     1. impairment assessments pursuant to the provisions of the *Wrongs Act* *1958*; and
     2. appeals with respect to the outcome of impairment assessments

are undertaken as early as possible and in a timely fashion to facilitate the maintenance of the trial date.

* 1. In complying with this obligation, practitioners must have regard to the appeal process as set out in the *Administrative Law Act 1978* andOrder 56of the *Supreme Court Rules*.

# Discovery and interrogatories

* 1. In damages cases, leave for discovery and to interrogate are generally provided by the standard timetabling orders.

## Discovery

* 1. Parties are reminded of their obligations pursuant to the *County Court Civil Procedure Rules* 2018 and the provisions of the *Civil Procedure Act* *2010* to discover and produce documents.
  2. Any concerns as to the adequacy of discovery must be raised with the party who provided discovery within 14 days of the production of documents.
  3. If a dispute as to the adequacy of discovery cannot be resolved between the parties, the party who raised the concern must, within 14 days from raising the dispute, request a directions hearing. Refer to Section 18 – Interlocutory Applications.

## Interrogatories

* 1. Without leave of the Court, the number of interrogatories served in proceedings in the Lists within the Division are to be limited to thirty (30) (including sub-parts).
  2. In motor vehicle and industrial accident cases, interrogatories should be confined to questions of liability.

# Mediation

* 1. 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.
  2. Mediations should facilitate the “just, efficient, timely and cost-effective resolution of the real issues in dispute”.[[8]](#footnote-8)

## The Court’s mediation procedures

* 1. Mediation in damages cases will usually be ordered to occur generally about six weeks prior to trial.
  2. 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 mediator, and the date, time and location of the mediation. 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 parties cannot agree on a mediator, they will each be asked to provide the Court with the names and availability of two preferred mediators, and the Court will appoint a mediator.
     3. The parties are to take all necessary steps to ensure that mediation commences on the appointed date and time. It is expected that prior to 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 every other party.
     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 claim.
  3. All discussions at mediation or a pre-mediation conference are confidential.
  4. If it is necessary to adjourn a mediation, the parties must file consent orders with the Common Law Registry adjusting the Court timetable.
  5. If the matter resolves at mediation, the parties must advise the Common Law Registry at the earliest possible time by emailing [commonlaw.registry@countycourt.vic.gov.au](mailto:commonlaw.registry@countycourt.vic.gov.au). Where the parties require further time to finalise a settlement agreement, they should request that the matter be listed for an administrative mention.

## Mediations in multiple defendant cases

* 1. Where there are:
     1. two or more defendants; or
     2. one or more defendants and one or more third party;

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.

* 1. If any of the defendants or third parties do not comply with the requirements of paragraph 16.8, any party shall be at liberty to apply to the Common Law Registry for a directions hearing before the Judicial Registrar of the Division at which the non-complying party will be asked to explain such non-compliance. Non-compliance may have costs consequences in accordance with the relevant provisions of the *Civil Procedure Act* *2010*.

## Further mediation

* 1. The Judge in Charge of the Division, the Judicial Registrar or the Trial Judge may order further mediation at any time including during the trial in accordance with section 47A of the *County Court Act* *1958* and r 50.07 of the Rules. The trial Judge may refer the proceeding to a judicial mediation at any time.
  2. 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.

# Exchange of further reports

* 1. Order 13 of the standard orders in the General list[[9]](#footnote-9) state there shall be no new medical or expert reports on damages and liability to be exchanged after mediation except with leave of the Court. This order is intended to ensure that all material on which the parties intend to rely is exchanged prior to mediation.
  2. Order 14 of the standard orders in the General list[[10]](#footnote-10) allows for, within 28 days of the trial date:
     1. the exchange of any updated reports, together with supporting documentation. This order provides for the updating of medical material prior to trial, and allows for clarification of expert opinion obtained and exchanged prior to mediation on a specific issue arising at mediation;
     2. the service of any final particulars of special damages, loss of earnings and loss of earning capacity.
  3. Without leave of the Court, standard order 14[[11]](#footnote-11) does not enable a party to:
     1. introduce reports from experts who have not previously provided a report; or
     2. recast or expand its case by the introduction of wholly new material.

# Interlocutory applications

## Court appearances

* 1. Law graduates who are not yet admitted to practice may appear at directions hearings but must seek leave of the Court.
  2. 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.
  3. If it appears to the Court that the person appearing is not fully briefed on all relevant aspects of the matter, the Court may order the practitioner with the conduct of the file to attend. This may result in costs consequences.
  4. Parties are required to appear at directions hearings, including matters in which minutes of proposed consent orders have been submitted, unless otherwise advised by the Court.

## Summons and directions hearings

* 1. The Court expects that parties will attempt to resolve any interlocutory issues without judicial intervention prior to issuing a summons or requesting that a matter be listed for directions hearing.
  2. 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 prior to the summons/directions hearing. If this is not complied with, the hearing may be adjourned, and there may be costs consequences.

### Summons

* 1. A summons and affidavit in support will be required for the following applications, irrespective of whether the application is consented to:
     1. Applications to join a party;
     2. Applications to vacate a trial date in a cause or jury trial;[[12]](#footnote-12)
     3. Failure of another party to comply with a Court order.
  2. A summons and affidavit in support will be required for the following applications where they are opposed:
     1. Dismissal applications;
     2. Applications to amend a pleading.
  3. Prior to eFiling the summons, practitioners must obtain a date and time of hearing from the Common Law Registry by emailing a completed Summons date application form to the Common Law Registry at [commonlaw.registry@countycourt.vic.gov.au](mailto:commonlaw.registry@countycourt.vic.gov.au). This form is available on the County Court website at: [Summons date application form](https://www.countycourt.vic.gov.au/going-court/common-law-division/request-hearing). The parties are required to provide particulars of the relief sought in the summons, a time estimate for the hearing of the summons, the allocated trial date and whether any other party is on notice of the summons.

### Directions hearings

* 1. A summons is not required for applications made under liberty to apply provisions, Court ordered directions hearings and disputes regarding inadequate discovery (as outlined in paragraph 15.4).
  2. These applications are to be commenced by emailing a completed Directions Hearing application form to the Common Law Registry at [commonlaw.registry@countycourt.vic.gov.au](mailto:commonlaw.registry@countycourt.vic.gov.au). This form is available on the County Court website at: [Directions Hearing application form](https://www.countycourt.vic.gov.au/going-court/common-law-division/request-hearing).
  3. Affidavits will not be required unless there is a factual dispute.
  4. If the application is urgent, the Common Law Registry should be notified at the time the application is lodged so that suitable arrangements can be made.

# Confidential communications: Division 2A of Part II of the *Evidence (Miscellaneous Provisions) Act 1958*

## General

* 1. 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;[[13]](#footnote-13)
     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.
  2. Practitioners should familiarise themselves with 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

* 1. 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

* 1. 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.
  2. A practitioner who intends to issue such a subpoena must:
     1. File with the Common Law Registry at [commonlaw.registry@countycourt.vic.gov.au](mailto:commonlaw.registry@countycourt.vic.gov.au):
        1. an application to issue a subpoena or to produce or adduce evidence as to a confidential communication in accordance with Schedule 3 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. within 14 days of the hearing date for the application serve:
        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.[[14]](#footnote-14)
  3. The hearing of the application for leave will be conducted by a Judge or Judicial Registrar sitting in the Common Law Division.
  4. If leave is granted, the Judge or Judicial Registrar will order production of documents returnable before the Registrar.

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

* 1. 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 Common Law Registry at [commonlaw.registry@countycourt.vic.gov.au](mailto:commonlaw.registry@countycourt.vic.gov.au)
        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;

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.

* 1. 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.
  2. 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

* 1. 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.
  2. The Reserve List cases are no longer called over in Court, and parties will instead be asked to appear via videolink.
  3. Parties who have a case in the Common Law Division Reserve List will receive an email from the Common Law Registry by 5pm the evening before the trial and are to respond to this email by 6pm the evening before 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.
  4. The Court will endeavour to allocate the proceeding as a matter of priority. A failure to provide the information by 6pm the evening before trial may result in a delay in the matter being allocated. If the Court is able to allocate the proceeding before 11am on the day of trial, the parties will be contacted by the Judge’s associate in relation to the running of the proceeding.
  5. Where the proceeding has not been allocated by 11am on the day of trial, the proceeding will be listed for a call over before the Reserve Judge at 11.15am. Counsel is expected to be available to appear with a minimum of 15 minutes’ notice.
  6. The parties should advise the associate if a matter settles.
  7. If a Judge has not become available by 3pm, 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, and with priority.
  8. 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

* 1. 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

|  |  |  |
| --- | --- | --- |
| 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 1A**

**Standard timetabling orders – 10 months to trial date**

**ORDERS**

***Trial date and fees***

1. The hearing listed on [date] is vacated. OR The proceeding is set down on [44 weeks] as a [*jury or cause*] trial (estimate # days).
2. By [9 weeks before trial (week 35)], the plaintiff is to pay the setting down fee. In default, any party may pay the fee within a further 21 days. If the fee is not paid trial date will be vacated. OR The setting down for trial fee has been paid in this proceeding.
3. By [*5 weeks before trial*], the [Party] is to pay the jury fee. In default, by [*3 weeks before trial*] any party may pay the fee. If the fee is not paid, the trial will proceed as a Cause. OR The first day jury fee has been paid in this proceeding.
4. By [5 days before trial], the plaintiff is to pay the first day hearing fee OR The first day hearing fee has been paid in this proceeding.
5. Any application to vacate the trial date must be made by summons and supported by an affidavit.

***Discovery and interrogatories***

1. By [+week 2], the parties have leave to serve notices for discovery.
2. By [+10 weeks (week 12)], a party served with a notice for discovery must make discovery (including full inspection) of the following documents:
   1. each document referred to in the party’s pleadings or the particulars of the pleadings.
   2. any document which may be produced by the party during evidence at the trial.
   3. any document which may harm the party’s case.
   4. any document or class of documents which any other party reasonably requests the party to discover.
3. By [+4 weeks (week 16)], the parties have leave to serve interrogatories for the examination of another party.

***Expert reports, subpoenas and mediation***

1. By [+14 weeks (week 30)]:
   1. the parties are to exchange any medical and/or expert reports concerning damages and liability.
   2. the plaintiff is to serve particulars of special damage, loss of earnings and loss of earning capacity.
2. By [+2 weeks (week 32)], any subpoena under Order 42A of the *County Court Civil Procedure Rules* 2018 is to be issued.
3. By [+6 weeks (week 38)], the parties are to mediate the dispute.
4. The plaintiff must notify the Court if the proceeding settles at or after mediation.
5. On [+2 week (week 40)], the proceeding is listed for a post mediation administrative mention before the Duty Judge.
6. No new medical or expert reports on damages and liability are to be exchanged after mediation except with leave of the Court.
7. By [28 days prior to trial, (week 40)]:
   1. the parties are to exchange any updated reports, together with supporting documentation.
   2. the plaintiff is to serve any final particular of special damages, loss of earning and loss of earning capacity.

***Court books and other***

1. By [2 days before trial], the parties are to file and serve electronic court books. Court books are to be prepared in accordance with PNCLD 14-2020 ‘Information Technology’.
2. Costs reserved.

# SCHEDULE 1B

**Standard timetabling orders – 12 months to trial date**

**ORDERS**

***Trial date and fees***

1. The hearing listed on [date] is vacated. OR The proceeding is set down on [52 weeks] as a [*jury or cause*] trial (estimate # days).
2. By [9 weeks before trial (week 43)], the plaintiff is to pay the setting down fee. In default, any party may pay the fee within a further 21 days. If the fee is not paid trial date will be vacated. OR The setting down for trial fee has been paid in this proceeding.
3. By [*5 weeks before trial*], the [Party] is to pay the jury fee. In default, by [*3 weeks before trial*] any party may pay the fee. If the fee is not paid, the trial will proceed as a Cause. OR The first day jury fee has been paid in this proceeding.
4. By [5 days before trial], the plaintiff is to pay the first day hearing fee. OR The first day hearing fee has been paid in this proceeding.
5. Any application to vacate the trial date must be made by summons and supported by an affidavit.

***Discovery and interrogatories***

1. By [week 2], the parties have leave to serve notices for discovery.
2. By [+10 weeks (week 12)], a party served with a notice for discovery must make discovery (including full inspection) of the following documents:
   1. each document referred to in the party’s pleadings or the particulars of the pleadings.
   2. any document which may be produced by the party during evidence at the trial.
   3. any document which may harm the party’s case.
   4. any document or class of documents which any other party reasonably requests the party to discover.
3. By [+4 weeks (week 16)], the parties have leave to serve interrogatories for the examination of another party.

***Expert reports, subpoenas and mediation***

1. By [+22 weeks (week 38)]:
   1. the parties are to exchange any medical and/or expert reports concerning damages and liability.
   2. the plaintiff is to serve particulars of special damage, loss of earnings and loss of earning capacity.
2. By [+2 weeks (week 40)], any subpoena under Order 42A of the *County Court Civil Procedure Rules* 2018 is to be issued.
3. By [+6 weeks (week 46)], the parties are to mediate the dispute.
4. The plaintiff must notify the Court if the proceeding settles at or after mediation.
5. On [+2 week (week 48)], the proceeding is listed for a post mediation administrative mention before the Duty Judge.
6. No new medical or expert reports on damages and liability are to be exchanged after mediation except with leave of the Court.
7. By [28 days prior to trial (week 48)]:
   1. the parties are to exchange any updated reports, together with supporting documentation.
   2. the plaintiff is to serve any final particular of special damages, loss of earning and loss of earning capacity.

***Court books and other***

1. By [2 days before trial], the parties are to file and serve electronic court books. Court books are to be prepared in accordance with PNCLD 14-2020 ‘Information Technology’.
2. 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 (date) at 4pm, the plaintiff is to file and serve any summons for an extension of time within which to commence a proceeding pursuant to the *Limitation of Actions Act 1958* be issued (the “application”).
2. The limitation issue raised by the defence (the “issue”) is listed for hearing on (date) (estimate\_\_\_ days).
3. By (date) at 4pm, the plaintiff is to file and serve any affidavits in support of the application.
4. By (date) at 4pm, the defendant is to file and serve any affidavits in response.
5. By (date) at 4pm, the plaintiff is to file and serve any affidavits in reply.
6. Subject to any order of the trial judge, the trial of the application/issue is by affidavit.
7. By [10 days prior to the hearing], the parties are to file and serve any notices of cross-examination.
8. Liberty to apply to the Court for further directions upon reasonable notice to all other parties.

**SCHEDULE 3**

IN THE COUNTY COURT

OF VICTORIA

AT \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CI-\_\_\_\_\_\_\_

BETWEEN:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Plaintiff

and

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Defendant

**APPLICATION TO ISSUE A SUBPOENA OR TO PRODUCE OR ADDUCE EVIDENCE AS TO A CONFIDENTIAL COMMUNICATION**

|  |  |
| --- | --- |
| Date of Document: | Practitioners Code: |
| Filed on behalf of: | Telephone: |
| Prepared by: | DX: |
| Ref: | |
| Email: | |

**TAKE NOTICE:**

Pursuant to s32C of the *Evidence (Miscellaneous Provisions) Act 1958* (“the *EMP Act*”)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ intends to make application on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

alternatively, at the hearing of an application in or at trial of this proceeding on \_\_\_\_\_\_\_\_\_\_\_\_

at \_\_\_\_\_\_\_\_\_ am/pm in the County Court, 250 William Street Melbourne to seek leave:

(a) to issue a subpoena for the production of documents which may contain confidential communications (as defined in s32B of the *EMP Act*);

(b) to produce a document which may contain a confidential communication;

(c) to adduce evidence of a confidential communication or as to a document which may record a confidential communication.

The nature of the confidential communication sought to be produced/adduced is:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(*If you wish, you may make oral or written submissions on this issue to be heard or read by a Judge or Judicial Registrar of the Court on the day fixed for hearing above.*

*The matters to be taken into account to determine whether leave should be granted are as set forth in s32D - F of the EMP Act*.)

Attached to this Application is a copy of the proposed subpoena and an outline of the submissions/evidence as to the relevant issues

………………………………………………………………

Applicant

NOTE:

This notice, duly completed must be served upon:

Each other party to the proceeding

The proposed recipient of the subpoena

The witness it is proposed to call to give evidence

The protected confider

as may be relevant.

1. *Civil Procedure Act* 2010, s41(1), s42(1) [↑](#footnote-ref-1)
2. *Civil Procedure Act* 2010, s46 [↑](#footnote-ref-2)
3. *County Court Civil Procedure Rules* 2008, order 27.03(11)(b) [↑](#footnote-ref-3)
4. Sample [list together with orders](http://www.countycourt.vic.gov.au/civil-directions-group) are available on the County Court website [↑](#footnote-ref-4)
5. In all Lists but the Confiscation List, the Serious Injury List and the WorkCover List. [↑](#footnote-ref-5)
6. *Victoria Police Act* 2013, Divisions 8 [↑](#footnote-ref-6)
7. As defined in s72 and 73 of the *Victorian Police Act* 2013 [↑](#footnote-ref-7)
8. *Civil Procedure Act* 2010, s7(2)(c)(ii) [↑](#footnote-ref-8)
9. Refer to annexures in Schedule 1A and Schedule 1B [↑](#footnote-ref-9)
10. Refer to annexures in Schedule 1A and Schedule 1B [↑](#footnote-ref-10)
11. Refer to annexures in Schedule 1A and Schedule 1B [↑](#footnote-ref-11)
12. In a serious injury application, a summons is required to vacate a trial date where the trial date is within 28 days of the application and the application is opposed [↑](#footnote-ref-12)
13. 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-13)
14. Or such other period of notice as the Court orders: Section 32C(3) of the *EMP Act* [↑](#footnote-ref-14)