



Government Gazette

of the State of

New South Wales

**Number 383–Parliament, Ministerial, Courts and Police
Friday, 25 August 2023**

The New South Wales Government Gazette is the permanent public record of official NSW Government notices. It also contains local council, non-government and other notices.

Each notice in the Government Gazette has a unique reference number that appears in parentheses at the end of the notice and can be used as a reference for that notice (for example, (n2019-14)).

The Gazette is compiled by the Parliamentary Counsel's Office and published on the NSW legislation website (www.legislation.nsw.gov.au) under the authority of the NSW Government. The website contains a permanent archive of past Gazettes.

To submit a notice for gazettal, see the Gazette page.



SUPREME COURT PRACTICE NOTE SC EQ 12

Supreme Court Equity Division – Real Property List

Commencement

1. This Practice Note was issued on 17 August 2023 and commences on 18 August 2023.

Introduction

2. The objective of the Real Property List in the Equity Division (the List) and this Practice Note is to facilitate the prompt and efficient resolution of the real issues in dispute in Real Property Matters.
3. Real Property Matters are proceedings involving claims in respect of land or interests in land, including claims:
 - (a) in respect of contracts for the sale of land;
 - (b) in respect of leases of land;
 - (c) in respect of easements or covenants over land; and
 - (d) pursuant to or in relation to the provisions of statutes relating to real property including the *Real Property Act 1900* (NSW), the *Conveyancing Act 1919* (NSW), the *Crown Lands Act 1989* (NSW) and the legislation governing the creation and management of strata schemes and community schemes.
4. Real Property Matters do not include proceedings in, or to be commenced in, the Possession List in the Common Law Division.
5. All proceedings in the List will be case managed by the Real Property List Judge (the List Judge) on a Friday.

Application

6. This Practice Note applies to new and existing Real Property Matters that are entered in the List.

7. The Court may, if it is satisfied that it is appropriate to do so, order that proceedings be entered in or removed from the List. The making of an order removing proceedings from the Lists shall not affect any orders made or directions given prior to such removal.
8. Practice Note SC Eq 1 (Case Management) does not apply to proceedings in the List.
9. A party who considers that compliance with this Practice Note will not be possible, or will not be conducive to the just, quick and cheap disposal of the proceedings, may apply to be relieved from compliance on the basis that an alternative proposed regime will be more conducive to such disposal.

Commencing proceedings and alternative dispute resolution

10. The parties should be aware of Practice Note SC Gen 6 (Mediation), and the provisions in Part 4 of the *Civil Procedure Act 2005* (NSW) (Mediation of proceedings) and the relevant provisions of the *Uniform Civil Procedure Rules 2005* (NSW) including but not limited to Part 20, Division 1.
11. It is expected that prior to the commencement of proceedings in the List, the parties will have considered referral of their dispute to mediation or another alternative dispute resolution process. It is also expected that the lawyers, or the litigant, if not legally represented, will be in a position to advise the Court on the first return date of the Summons whether:
 - (a) the parties have attempted some alternative dispute resolution; and
 - (b) their respective clients are willing to proceed to some alternative dispute resolution at an appropriate time.
12. If a matter is referred to mediation by consent and/or by an order pursuant to the section 26 of the *Civil Procedure Act 2005*, the parties are to ensure that the person(s) who is (are) able to make a decision as to whether the matter settles is present personally or by authorised nominee(s) at the mediation.
13. Any Summons or Statement of Claim must record on the front sheet that it is in the Real Property List. The Court encourages electronic filing of all pleadings and affidavits.
14. When proceedings are commenced they will be allocated a first return date before the List Judge in a Friday List.

Orders in Chambers/Consent orders

15. Parties must confer in advance of the listing date and make every effort to agree upon suitable consent orders. To facilitate the just, quick and cheap resolution of matters, appropriate consent orders will be made by the List Judge in Chambers where they have been provided to the List Judge's Associate on any day before 12 noon on the Thursday before the relevant Friday List. Executed consent orders should be sent to Chambers in both Microsoft Word (.docx) and

- Adobe Acrobat formats (.pdf). If appropriate, orders will be made in Chambers and the parties notified.
16. When consent orders are to be made either in Chambers or in Court varying a timetable, those orders must include the vacation of any date for directions hearings or the hearing of Motions that the parties no longer wish to maintain, and the allocation of a future listing date.
 17. If agreement cannot be reached or parties have not been notified that orders have been made in Chambers, the matter will remain listed for directions and parties are required to attend in person.
 18. Any application for leave to appear in the List via video link or conference telephone must be made to Chambers in writing, with reasons and evidence where appropriate, before 12 noon on the Thursday before the Friday List. Unless parties are notified that leave has been granted by the List Judge, parties are required to appear in person. To facilitate the efficient running of the List, matters where video link or conference telephone appearance has been granted may be placed at the end of the List.
 19. If proceedings settle prior to any listing, orders disposing of the proceedings will be made by the List Judge (including in Chambers). Any Terms of Settlement and/or Notices of Discontinuance should be emailed to the List Judge's Associate.

Motions and Directions

20. All proceedings are case managed by the List Judge with the aim of ensuring a speedy resolution of the real issues between the parties. Even if by consent, the Court will be unlikely to accept an agreed timetable inconsistent with this aim.
21. It is expected that on the first return date the parties will be in a position to clearly identify the real issues that will be in dispute and to provide to the Court an agreed regime for preparing the matter for trial, including reference to alternative dispute resolution or a single expert at a suitable time.
22. Motions are listed at 9.15am and are called through for the purpose of ascertaining the length of the hearing and allocating a time for hearing on that or some other day. Matters for directions will be listed after Motions. The times for the commencement of the Motions and Directions hearings may change and parties should always check the daily court lists shortly before attending Court on a Friday.
23. Interlocutory applications are not encouraged. It is expected that the parties will make every effort to resolve any interlocutory issues. Motions may not be filed without leave, (except for substituted service motions that will be considered by Registrars in chambers). Leave must be obtained from the List Judge, in which case the motion will be listed in a Friday List, or before the Registrar if within the Registrar's delegation and can be heard within 2 hours. Leave can be sought

from the List Judge at a directions hearing on Friday or, where urgent, by email to the List Judge's Associate.

24. When leave is sought, parties should be prepared to provide the List Judge with a proposed timetable for the motion to be heard and whether a court book and submissions would assist the Court.
25. As a general rule, applications to strike out or for summary judgment will not be entertained. Sometimes applications are appropriate, but parties should expect strictness in declining to entertain such applications.
26. Any urgent application in a Real Property matter must be made by arrangement with the List Judge's Associate, who will advise the Judge, to whom application should be made.
27. Practice Note SC Eq 5 (Expert Evidence) and Practice Note SC Eq 11 (Disclosure in the Equity Division) apply to proceedings in the List.

Hearings

28. Hearing dates are not allocated in Chambers and parties are expected to confer regarding a realistic estimate of the hearing length and common available hearing dates before they appear before the List Judge.
29. Generally hearing dates will only be allocated after evidence is complete.
30. When proceedings are listed for final hearing, the Court will generally make the Usual Order for Hearing set out in Annexure A, with or without modification.

The Hon. A S Bell

Chief Justice of New South Wales
17 August 2023

Amendment History

17 August 2023: This Practice Note replaces the previous version of Practice Note SC Eq 12 which was issued on 21 March 2019.

21 March 2019: This Practice Note replaces the previous version of Practice Note SC Eq 12 which was issued on 20 May 2015.

1 September 2016: This Practice Note replaces the previous version of SC Eq 12 that was issued 20 May 2015 and commenced on 1 June 2015.

Annexure A

Usual Order for Hearing

1. Unless the Court otherwise orders, the Court Book need not be electronic. If the Court Book is to be electronic, Practice Note SC Gen 7 will apply. The Trial Judge may also request a hard copy in any event. The Court may order that the sections of the Court Book described below comprise of separate PDF bundles, each separately paginated and each bookmarked.
2. By no later than five (5) working days before the trial date, the parties are to provide to the Associate to the Trial Judge, two copies of a Court Book which is to contain, in separate sections:
 - (a) latest process and pleadings;
 - (b) submissions (including chronologies and lists of authorities) and any objections which are essential;
 - (c) affidavits (excluding annexures and exhibits which consist of primary documentation);
 - (d) documentary evidence – which is to be placed in chronological sequence so far as is practicable and consecutively numbered (without tabs unless the Court otherwise directs). If there are a significant number of emails, the chains should be dismembered and placed in chronological sequence; and
 - (e) expert evidence.
3. A physical Court Book must be in working ring-binder folders, none of which is to be filled beyond its reasonable working capacity, and the documents are to be accurately hole-punched.
4. The affidavits are to be annotated to the Court Book so that documents referred to, annexed or exhibited to an affidavit must be referenced to the place where the document is in the chronological section of the Court Book.
5. Not more than one index should be provided.
6. By no later than two (2) working days before the trial date, the parties must cause to be filed and served a short outline of submissions, a chronology of relevant events, any objections to evidence that are essential and a list of authorities.

Children's Court of New South Wales

Practice Note No. 18

Winha-nga-nha List

1. Commencement

1.1 This Practice Note commences on 4 September 2023.

2. What is the Winha-nga-nha List?

2.1 The Winha-nga-nha List is an alternative court process for Aboriginal and Torres Strait Islander families involved in care proceedings.

2.2 The Winha-nga-nha List aims to engage Aboriginal and Torres Strait Islander families and communities in decisions about the care of Aboriginal and Torres Strait Islander children.

2.3 The Winha-nga-nha list will:

- a. explore Aboriginal and Torres Strait Islander cultural considerations
- b. involve Aboriginal and Torres Strait Islander parents and children in court proceedings
- c. include extended family members where appropriate
- d. help families to connect to local Aboriginal and Torres Strait Islander community supports during care proceedings.

2.4 The Winha-nga-nha List will provide:

- a. a less formal courtroom setting
- b. time to listen, talk and think about what is important for the children
- c. an Aboriginal Court Liaison Officer to support families who are involved with the Court.

2.5 The practice directions in other Children's Court Practice Notes apply in matters in the Winha-nga-nha List unless the directions are inconsistent with this Practice Note.

3. Sittings of the Winha-nga-nha List

- 3.1 The Winha-nga-nha List will sit at Dubbo Children's Court and at other courts as directed by the President of the Children's Court. Any Court where a Winha-nga-nha List sits is called a "Referring Court".
- 3.2 All care applications at a Referring Court that involve an Aboriginal or Torres Strait Islander child or parent will be put in the Winha-nga-nha Conversations List.
- 3.3 An Initiating Application where s.43 or s.44 applies or an Application for an Emergency Care and Protection Order under s.46 is to be listed before the Referring Court unless the Winha-nga-nha List is sitting within three days of the application being filed. After the first listing in the Referring Court, the case should be listed in the Winha-nga-nha Conversations List.
- 3.4 A case must not be adjourned to a Winha-nga-nha List from a non-referring Court unless the Winha-nga-nha List judicial officer approves the referral.
- 3.5 The Winha-nga-nha List will be conducted by one judicial officer, where practicable.

4. Who will attend?

- 4.1 The Winha-nga-nha List will be attended by:
 - a. parties (unless excused)
 - b. their legal representatives
 - c. the Aboriginal Court Liaison Officer
 - d. the Liaison Officer for the representative of the Secretary
- 4.2 As a minimum, the caseworker/s and a manager with the delegation to make decisions about the case on behalf of the Secretary are to attend:
 - the first mention of the case in the Winha-nga-nha List
 - the court date on or after the filing of the Summary of Proposed Plan
 - the court date on or after the filing of any Care Plan
 - any court date where the Secretary has not complied with filing directions
 - any other date as directed by the judicial officer.

4.3 The Winha-nga-nha List may also be attended (unless the Court directs otherwise) by:

- a support person for a party, including an Aboriginal or Torres Strait Elder or respected member of the local community
- members of a party's extended family (when invited by the party)
- a person who is proposed to be, or wishes to be considered as, a carer for a child or young person
- an interpreter and/or a non-legal advocate where a party wants assistance to communicate effectively.

5. Directions list

5.1 The Directions List will involve short administrative mentions. Parties may attend the Directions List but they do not need to attend the Directions List if legally represented.

6. Conversations list

6.1 Each case in the Conversations List will be allocated at least 20 minutes of court time.

6.2 The Conversations List will provide an opportunity for substantive issues to be discussed in a less formal setting.

7. Dispute Resolution Conferences

7.1 Cases in the Winha-nga-nha List may be referred for earlier and more frequent Dispute Resolution Conferences (DRCs) to enable greater participation of Aboriginal and Torres Strait Islander families and community in proceedings.

7.2 Children's Registrars will exercise discretion in determining whether extended family, community members and services nominated by the parties are able to participate in DRCs.

Judge Ellen Skinner

President, Children's Court of NSW

Date: 25 August 2023