FEDERAL COURT OF AUSTRALIA

CENTRAL PRACTICE NOTE: NATIONAL COURT FRAMEWORK AND CASE MANAGEMENT (CPN-1)

Central Practice Note

1. INTRODUCTION

1.1 This Central Practice Note (CPN-1) sets out the fundamental principles concerning the National Court Framework ("**NCF**") of the Federal Court, together with key principles of case management procedure. All other practice notes are to be read within the framework established in this practice note and parties should not commence or take steps in proceedings without first considering the principles set out in this practice note.

1.2 This practice note takes effect from the date it is issued and, to the extent practicable, applies to proceedings whether filed before, or after, the date of issuing.

1.3 Under the NCF, the work of the Court will be broadly divided into nine National Practice Areas ("**NPAs**"), some of which have Sub-areas.

1.4 NPA practice notes have been developed that set out NPA-specific matters. Those practice notes are important and should be read together with this Central Practice Note. In addition, a number of general practice notes exist to address specific practice and procedure within the Court – for example: expert evidence or class actions. All practice notes are available on the Court's website.

2. NATIONAL COURT

2.1 The Court is a national court, although a significant amount of its work is international in character. The division into NPAs is along the lines of established areas of law. This structure exists in order to foster:

- consistent national practice;
- the utilisation of specialised judicial and registrar skills; and
- the effective, orderly and expeditious discharge of the business of the Court.

3. NATIONAL PRACTICE AREAS

3.1 Once filed, a matter will be allocated to a judge in the relevant NPA. The NPAs of the Court are:

- Administrative and Constitutional Law and Human Rights
- Native Title
- Employment and Industrial Relations
- Commercial and Corporations
- Taxation
- Intellectual Property
- Admiralty and Maritime
- Federal Crime and Related Proceedings
- Other Federal Jurisdiction

Further information about the nature of the cases that fall within each NPA is available on the Court's website, including at each NPA's "homepage".

3.2 Due to the scope of the cases that may fall within the Other Federal Jurisdiction NPA, it is impractical to seek to define exhaustively that NPA. However, it is important to note that the NPA covers cases which fall outside the scope of all other NPAs, including a broad variety of cases "arising under" a federal law, such as common law claims for negligence, equity suits and defamation actions.[1]

3.3 The Court recognises the need for a degree of specialisation. This will be reflected in the NPAs and Sub-areas, and the judges assigned to them, to the extent necessary.

3.4 The Commercial and Corporations NPA Sub-areas are:

- Commercial Contracts, Banking, Finance and Insurance
- Corporations and Corporate Insolvency
- General and Personal Insolvency
- Economic Regulator, Competition and Access
- Regulator and Consumer Protection
- International Commercial Arbitration

[1] See s 39B(1A)(c) of the *Judiciary Act 1903* (Cth), *LNC Industries Ltd v BMW (Australia) Ltd* [1983] HCA 31, *Australian Solar Mesh Sales Pty Ltd v Anderson* [2000] FCA 864 and *CGU Insurance Limited v Blakeley* [2016] HCA 2.

3.5 The Intellectual Property NPA Sub-areas are:

- Patents and Associated Statutes
- Trade Marks
- Copyright and Industrial Designs

3.6 The NPAs will be managed nationally by National Coordinating Judges, together with one or more Registry Coordinating Judges in each registry. The National and Registry Coordinating Judges in each NPA will be assisted nationally by registrars with specialised knowledge or skill. The National Operations Registrar, supported by national registrars, will coordinate the operations of the NCF, including managing the first instance and appellate work of the Court.

3.7 Further information about the NCF generally, each of the NPAs and Sub-areas, a list of judges in each NPA and Sub-area, and additional practice and contact information is available on the Court's website.

4. THE INDIVIDUAL DOCKET SYSTEM AND ALLOCATION PRINCIPLES

Docket System

4.1 The individual docket system remains in place and is an integral feature of the management of the Court's work under the NCF. The essential element of the individual docket system is that a case is allocated to the docket of a particular judge at or about the time of filing with the intention that, subject to any necessary reallocation, it will remain with that judge for case management and disposition.

Allocation Principles

4.2 When filing, parties will nominate a relevant NPA (and Sub-area, if relevant). The appropriate NPA (and Sub-area, if relevant) will then be promptly identified and set by the Court. The nomination by the party is not determinative. The identification by the Court may involve a question of judgment about the dominant character of the matter. The matter will then be allocated to a judge in the relevant NPA (and Sub-area, if relevant).

4.3 Subject to, availability of judges in the NPA in the registry of filing, to considerations of balance of workload and commitments of judges, and in limited and likely rare circumstances the character of a matter calling for a different approach, matters will be allocated in rotation to judges in the NPA or Sub-area in the registry of filing.

5. URGENT APPLICATIONS

5.1 The Court will assist parties to bring on urgent applications, including injunctions, which may require listing at the earliest appropriate time. Parties and their legal representatives should be familiar with the requirements of giving an undertaking as to damages if an injunction is sought and of the requirements and information set out in the Freezing Orders Practice Note (GPN-FRZG), the Search Orders Practice Note (GPN-SRCH) and the Usual Undertaking as to Damages Practice Note (GPN-UNDR), which are available on the Court's website. Where an injunction application falls into one of the specialised practice notes referred to in this paragraph, the procedures in the relevant practice note should be followed. Otherwise, the injunction application should be brought in accordance with Part 5 of this practice note.

Urgent Originating Applications

5.2 A "direct to chambers" duty mechanism applies for practitioners filing urgent originating applications in all NPAs, with self-represented litigants assisted by skilled registry officers.

5.3 In each Registry, duty procedures for urgent originating applications operate as follows:

- **Commercial and Corporations** – Urgent originating applications will be dealt with by dedicated Commercial and Corporations Duty Judges – see the Commercial and Corporations Practice Note (C&C-1);
- **Admiralty and Maritime** – Urgent originating applications should be taken directly to the Admiralty and Maritime Registry Coordinating Judge in the relevant registry or, in his or her absence, to a judge in the NPA in the registry or to the National Operations Registrar – see the Admiralty and Maritime Practice Note (A&M-1); and
- **Other NPAs** – Urgent originating applications should be taken directly to the General Duty Judge in the relevant registry. Unless otherwise indicated in individual NPA practice notes, if an urgent application is brought before the General Duty Judge and that judge is not a judge within the relevant NPA, the Court will arrange, where appropriate, to have the application referred to a judge in that NPA.

5.4 Contact information for applications to the Commercial and Corporations or General Duty Judges is available on the Court's website from the Daily Court List webpage and the Duty Judge Contact webpage. Admiralty and maritime judges in each registry (including the identity of the Registry Coordinating Judge) are also identified on the Court's website.

Urgent Interlocutory Applications

5.5 Urgent (and non-urgent) interlocutory applications should be brought to the attention of the docket judge (or the provisional docket judge / list judge as the case may be) who has the responsibility for hearing or case managing the proceeding at the time of the filing of the interlocutory application.

5.6 If, after approaching the chambers of the docket judge, it is clear that the docket judge is uncontactable or otherwise clearly unavailable to hear the urgent interlocutory application within the timeframes relevant to that application (eg. the judge is on extended leave and the matter requires immediate attention), then the urgent interlocutory application should be brought to the immediate attention of the relevant duty or coordinating judge in the same manner as set out for urgent originating applications (see paragraphs 5.2 – 5.4 above).

6. COMMENCING PROCEEDINGS

6.1 Unless otherwise specified in this practice note or individual NPA or general practice notes, the *Federal Court Rules 2011* (Cth) ("**Federal Court Rules**") and forms apply to the commencement of proceedings in the Court.

6.2 Flexible procedures for the commencement of proceedings or the filing of tailored pleading material are set out in a number of NPA practice notes and in this practice note at paragraphs 6.8 – 6.10 below.

Previous Practice and Procedure, Fast Track

6.3 Under the reforms introduced as part of the NCF, this practice note, the NPA practice notes and the general practice notes now set out the arrangements for practice, procedure and case management within the Court. Any pre-existing practice notes or administrative notices are superseded by these new practice notes; this includes practice documents that previously applied to Fast Track proceedings.[2] There are no longer any registry-specific administrative notices within the Court.

Innovative Pleadings Processes and Expedited Hearings

6.4 The former Fast Track mechanisms permitted parties to seek a quicker or more truncated hearing process than usually available and to use more informal pleadings than usual. Historically, the use of such procedures was limited and was confined to commercial and intellectual property cases only. The Fast Track procedure was effectively a commercial list procedure.

6.5 Under the NCF reforms and new practice documents, parties may now seek an expedited or truncated hearing process and a tailored or concise pleading process in any NPA, where appropriate. They may seek to adopt a process set out in one NPA practice note for use in a different NPA (see, for example, the flexible and streamlined procedures for the commencement of proceedings, use of concise statements and tailored discovery and evidence procedures set out in the Commercial and Corporations Practice Note). If an expedited

[2] Former Practice Note: CM8 - *Fast Track*; and former Administrative Notices: ACT2, NSW3, NT1, QLD4, SA1, TAS1, WA2 and VIC2 - *Proceedings Conducted in Accordance with the Fast Track Directions*.

proceeding process is appropriate, the Court will attempt to provide a judge who has the necessary time available to devote to an expedited process and hearing.

6.6 The key focus of the Court will be to ensure that the most appropriate and efficient mechanisms for case management, including appropriate mechanisms suggested by the parties, are adopted when considering the nature of each case and the needs of the parties. Parties should request any truncated or expedited hearing process or modified pleading process at or before the first case management hearing.

6.7 The parties should make plain at the time of filing any request for a truly expedited procedure and hearing.

Concise Statement Method

6.8 A party commencing a proceeding may file a concise statement in support of an originating application. The purpose of a concise statement is to enable the applicant[3] to bring to the attention of the respondent and the Court the key issues and key facts at the heart of the dispute, as well as the essential relief sought from the Court before incurring what might be the considerable cost of preparation of detailed pleadings. The concise statement is not intended to substitute the traditional form of pleading with a short form of pleading, but instead should be prepared more in the nature of a pleading summons, and may be drafted in a narrative form.

6.9 If a concise statement is filed with the originating application, no further originating material in support (whether by statement of claim or affidavit) is required to be filed until the Court orders that to be done.

6.10 The concise statement must not exceed 5 pages (including formal parts) and the Court would expect that ordinarily (except in complex cases) less than 5 pages will be necessary. It will be plain, concise and direct in every regard. It will omit unnecessary repetition and will do no more than summarise:

(a) the important facts giving rise to the claim;

(b) the relief sought from the Court (and against whom);

(c) the primary legal grounds (causes of action) for the relief sought; and

(d) the alleged harm suffered by the applicant, including - wherever possible - a conservative and realistic estimate or range of loss and damage.

[3] In this practice note, unless stated otherwise, a reference to applicant(s) or respondent(s) is intended to refer to plaintiff(s) or defendant(s) respectively.

7. OVERARCHING PURPOSE

7.1 The overarching purpose of civil practice and procedure and case management within the individual docket system is to facilitate the just resolution of disputes according to law as quickly, inexpensively and efficiently as possible (see ss 37M and 37N of the *Federal Court of Australia Act 1976* (Cth) ("**Federal Court Act**")).

7.2 The parties and their lawyers are expected, and have a statutory duty, to co-operate with the Court and among themselves to assist in achieving the overarching purpose and, in particular, in identifying the real issues in dispute early and in dealing with those issues efficiently. There are no exceptions to this expectation because of the size or nature of the matter.

7.3 This co-operation requires (and the Court expects) that the parties and their lawyers think about the best way to run their cases conformably with the overarching purpose. The parties and their lawyers can expect that the Court will engage with them in a dialogue to achieve the overarching purpose. The Court's Rules should never be viewed as inflexible. The overarching purpose includes the elimination of unnecessary "process-driven" costs. The Court expects parties and their lawyers to have in mind at all times the cost of each step in the proceeding, and whether it is necessary.

7.4 While the Court will manage the issues in dispute, the proceeding is always the parties' proceeding. In everything they do, the parties should approach their role as the primary actors responsible for identifying the issues in dispute and in ascertaining the most efficient, including cost efficient, method of its resolution.

8. CASE MANAGEMENT

8.1 The key objective of case management is to reduce costs and delay so that there are:

- fewer issues in contest;
- in relation to those issues, no greater factual investigation than justice requires; and
- as few interlocutory applications as necessary for the just and efficient disposition of matters.

8.2 As part of that key objective, the Court will make available, and encourages parties to use, any technology available within the Court, or appropriate external technology suggested by the parties, that may make the management or hearing of cases, trials and Alternative Dispute Resolution ("**ADR**") processes more efficient or useful. Included in that range of technology are the Court provided systems of:

- eLodgment (e-filing of documents with the Court as part of the Electronic Court File system);
- eTrials (conducting hearings through electronic processes);

- eCourtroom (a virtual-courtroom process useful for a range of applications that avoids the need for an in-person appearance in appropriate applications, being especially useful for the resolution of interlocutory disputes); and
- video link and audio link hearing arrangements.

8.3 An eRegistrar or the District Registrar is available in each registry to assist in facilitating electronic processes within the Court. Parties are directed to the Technology and the Court Practice Note (GPN-TECH) for further information.

Case Management Hearings

8.4 The first case management hearing is integral to case management. The aim of the hearing is to identify issues at the earliest possible stage. At the first case management hearing, consideration will be given, in particular, to the following:

- the appropriate course of efficient preparation of the matter and the steps truly required, including: any need for discovery, the most appropriate method of preparation and presentation of evidence in light of the issues truly or likely to be in contest, and the most appropriate method of trial;
- the possibility of listing the matter for hearing: the Court will endeavour, where possible, within 6 months of the case management hearing, to set a date for hearing with a hearing date as early as reasonably possible, bearing in mind at all times the legitimate interests of all parties to the litigation; and
- the available dispute resolution options, including mediation.

8.5 Commensurate with the above approach, prior to any case management hearing (including the first) the following matters should be considered by the parties in their preparation. Such matters are not a checklist applicable to all cases, but are the kinds of matters the parties may well have to consider in their preparation. Of course, some cases are simpler than others and consideration of the matters below should fit the case and the circumstances. Straightforward cases should be dealt with straightforwardly. One of the aims of the parties and their lawyers should be to eliminate all unnecessary process and procedural costs. The following can be viewed as the Court's **Case Management Imperatives**:

(a) identifying and narrowing the issues in dispute, including in any possible cross-claim, as soon as possible and the early identification and joinder of any further necessary parties and whether any Constitutional issue arises that would involve a notice under s 78B of the *Judiciary Act 1903* (Cth);

(b) taking to trial only the critical point(s) in issue;

(c) considering whether the proceeding is more appropriately heard in the Federal Circuit Court or whether the matter should, or is required, to be heard by a Full Court;

(d) considering whether, when a proceeding has been commenced with the concise statement method, a more detailed statement of the applicant's case (or some aspect of it) should be provided in some fashion, including whether in the form of a pleading or by way of particulars, or by way of a narrative statement of facts and explanation: for example, see *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited* [2019] FCA 1284 (Allsop CJ);

(e) alternatively considering whether, when a proceeding has been commenced by a statement of claim and/or affidavit, a concise statement or other technique, such as an agreed statement of facts or a more detailed pleading method, may be helpful in understanding the nature of proceedings;

(f) considering the use of, and timing for, any alternative dispute resolution, including mediation;

(g) considering how best to manage justiciable issues, such as possible separation of liability and quantum or penalty, preliminary issues of fact and law and whether or not some or all issues are susceptible to being referred to a referee under s 54A of the Federal Court Act and Division 28.6 of the Federal Court Rules;

(h) considering how best to manage lay and expert evidence efficiently and how to limit it to what is necessary; and considering how best to put forward relevant evidence - whether by affidavit, statement, oral evidence or a combination thereof;

(i) setting an appropriately early trial date and maintaining that date;

(j) eliminating or minimising the number of interlocutory hearings, and any interlocutory disputes being determined "on the papers" wherever possible;

(k) eliminating or reducing the burden of discovery;

(l) using collaborative tools to minimise the length of the trial hearing, including:

- using cross-party statements of agreed facts or law or an agreed chronology;
- agreeing on the time for trial and how it may be divided (eg. a "chess-clock" approach);

(m) making appropriate admissions in relation to the facts and matters which are not seriously in dispute;

(n) capping the amount of costs to be recoverable; and

(o) receiving short-form reasons for judgment to facilitate the expeditious delivery of any judgment.

8.6 Proper preparation for any case management hearing includes parties considering their own legal, personal and commercial interests and communicating with all other parties before any hearing to endeavour to agree on the most appropriate method to approach and prepare the matter and in particular to achieve or address the relevant Case Management Imperatives.

8.7 Any proposed orders of the parties should be provided to the judge's chambers as early as possible before any case management hearing (preferably by the working day before the hearing). Notwithstanding that proposed orders may have been provided by the parties to the Court, parties should assume that attendance is required at all case management hearings unless otherwise advised by the Court.

8.8 For each NPA the first case management hearing process may be specialised, but the considerations above apply in each case. Unless otherwise specified, the docket judge will conduct a case management hearing within 5 weeks of the filing and serving of a proceeding, at a time sufficient to enable all parties to be in a position to engage fruitfully in the case management hearing.

8.9 The importance of the first case management hearing is that, if conducted properly, it should minimise or eliminate the need for further case management hearings. The Court expects the parties and practitioners to communicate with each other in a meaningful way about matters to be raised at any case management hearing at an appropriate time before that hearing takes place. To that end, filing-parties are not only required to comply with the requirements for service within the Federal Court Rules, but should serve the relevant material at the earliest possible time prior to the case management hearing in order to facilitate the engagement between the parties referred to above. The Court expects, wherever possible, that counsel retained in the matter or the lawyer with carriage of, and familiarity with, the matter will attend the first and any subsequent case management hearings.

9. ALTERNATIVE DISPUTE RESOLUTION

9.1 The Court has a broad range of options to facilitate ADR and expects that parties will always consider or seek an early resolution of matters utilising the ADR options available under s 53A of the Federal Court Act and Part 28 of the Federal Court Rules, including mediation. The ADR options should be viewed by the parties not only as a means of possible resolution of the whole dispute, but also as a means of limiting or resolving issues by agreement and of resolving interlocutory disputes.

9.2 Registrars of the Court have skill and training in various types of ADR for disputes in all NPAs, including mediation, confidential conferences, case management support (such as helping to resolve discovery disputes) and conducting expert witness conferences.

9.3 Where appropriate, the ADR skills of registrars will be drawn on by the Court to help parties resolve issues (whether substantive or procedural) at the earliest and most effective stage of the proceeding and the Court will utilise its technology and innovative meeting arrangements to help to conduct ADR processes in an efficient and cost-effective manner.

9.4 The Court expects parties to place themselves in the most informed position possible for any ADR process, including agreeing on categories of information or limited documentation necessary to exchange in advance of mediation and other ADR processes so that those processes are truly effective.

9.5 When attending mediation, parties and their legal representatives must attend for the purpose of participating in good faith negotiations and must have the ability, in a practical way and with flexible instructions, to participate meaningfully in negotiations with a view to narrowing the issues in dispute and reaching a mutually acceptable resolution between them by way of compromise.

9.6 Further information about ADR is available on the Court's website, including guiding information about court-ordered mediations.

10. DISCOVERY

10.1 In this part:

Discovery Applicant	means any party making a request for discovery
Discovery Respondent	means any party responding to a request for discovery
Request	means a request for discovery
Response	means a response to a Request

Approach to Discovery

10.2 Discovery is dealt with in Part 20 of the Federal Court Rules, with which parties should be familiar. In particular, it is to be recalled that no party is to give, and so no party has a right to, discovery (in the sense of provision of a list of documents under the Federal Court Rules) without an order (r 20.12). A Discovery Applicant should not make a Request unless it will facilitate the just resolution of the proceeding as quickly, inexpensively and efficiently as possible (r 20.11).

10.3 Discovery can be extremely burdensome. Matters in some NPAs will rarely need discovery. Where discovery is necessary, the Court expects the parties and their representatives to take all steps to minimise its burden. This involves co-operation between the parties. Informal exchange of documents may minimise the use of formal procedures. Parties should also consider the possible benefits of utilising innovative discovery techniques, including the

Redfern Discovery Procedure set out in paragraphs 8.4 to 8.7 of the Commercial and Corporations Practice Note.

10.4 By way of assistance to the parties, the guidelines below should be considered and where appropriate followed by the parties in order to minimise costs and unnecessary process and expense related to procedure.

10.5 Prior to the Discovery Applicant approaching the Court with a Request, the Court expects that the parties will have discussed discovery issues between them and, if possible, agreed on a protocol for discovery. Such a protocol may involve consensual measures agreed to by the parties which may obviate the need for strict compliance with the Federal Court Rules (such as avoiding the need for a list of documents). The Court will consider the parties' suggestions and may approve them if the Court considers them appropriate.

10.6 The Court will not approve expansive or unjustified Requests and will generally only consider approving a Request in one or more of the following circumstances – where:

(a) the Request facilitates the just resolution of the proceeding as quickly, inexpensively and efficiently as possible;

(b) to do so will effectively facilitate a forthcoming mediation (or other ADR process);

(c) the Court and the parties are sufficiently informed of the nature of the case and issues in dispute so that the appropriateness of the Request can be properly considered (eg. possibly only after key evidence has been filed);

(d) the Discovery Applicant has adequately justified the need for the Request, including demonstrating:

(i) the utility of the Request and the appropriateness of discovery occurring at that time;

(ii) the relevance and importance of the documentation or information sought;

(iii) the limited and targeted nature of the Request; and

(iv) that the documents sought are, or are very likely to be, significantly probative in nature, or the documents materially support, or are materially adverse to, any party's case in the proceeding.

10.7 A Request must be proportionate to the nature, size and complexity of the case – ie. the Request should not amount to an unreasonable economic or administrative burden on the Discovery Respondent.

10.8 If the Court approves a Request, a Discovery Respondent's search for and production of documents pursuant to a Request must be: made in good faith, uninfluenced by any negative impact on the Discovery Respondent (other than legitimate considerations such as genuine

legal professional privilege or commercial confidentiality), and should be comprehensive, but proportionate.

10.9 If an order for discovery has been made, the parties have a continuing obligation to make discovery (in accordance with r 20.20 of the Federal Court Rules).

10.10 Where a Request has been approved by the Court, a Discovery Respondent must, if requested to do so by a Discovery Applicant, provide a brief description of the steps taken by the Discovery Respondent to conduct a good faith proportionate search to locate discoverable documents, such as what records have been searched for, what search criteria or terms have been used, or what databases have been searched.

10.11 Where a Discovery Respondent asserts that documents are unavailable or burdensome to access and discover, the Discovery Respondent must clarify to the Discovery Applicant (unless there is demonstrably no need to do so), how the Discovery Respondent manages, stores, accesses, destroys and disposes of documents. The Court may require a Discovery Respondent to depose to such information.

10.12 Where a genuine contest relating to discovery arises, the Court will likely apply the Federal Court Rules relating to discovery strictly (eg. how a party gives discovery: r 20.16).

10.13 How a discovery dispute is resolved by the docket judge will be a matter for him or her. It may be that the dispute can be the subject of a mediation or a confidential conference with a registrar. If there is to be a dispute, one possible approach is not to prepare what might be extensive and expensive affidavit evidence, but to brief the advocates who are to appear in the matter to address the docket judge orally as to relevance, necessity or oppression or any other relevant consideration. The Court expects the parties and their representatives to display common-sense and moderation in requests for discovery, in disputes about discovery and in expending costs on both.

11. EVIDENCE AND WITNESSES

11.1 In respect of evidence, parties are entitled to know, with sufficient notice and clarity, the evidence upon which other parties intend to rely. This is important not only to the running of the case, but also to facilitating an early resolution of the case.

11.2 Parties should avoid preparing and filing evidence that is unnecessary, lengthy and only of peripheral relevance. Parties should focus on providing evidence (whether written or oral) that is sufficiently relevant to the case and material to its outcome.

11.3 At an early stage in the proceedings parties should consider and confer about an approach to the management of evidence. That consideration should cover the best way to lead evidence – whether written or oral.

11.4 The parties' approach should have in mind the most effective, efficient and economical way to manage evidence. Innovative tools relating to managing evidence will be encouraged by the Court, including the use of:

- statements of agreed and disputed facts;
- joint reports and concurrent expert evidence; and
- organisation of evidence, where appropriate, into discrete components (eg. preliminary issue(s), splitting liability and quantum etc).

11.5 The choice between written evidence (whether by affidavit or statement) and oral evidence (or a combination of both) will depend upon the nature of the case and the nature of the evidence in the relevant NPA or Sub-area. One of the Court's primary aims is a consistency of approach within NPAs, and in that regard, parties should give careful consideration to the relevant NPA practice note. In many cases of contested oral evidence or contested state of mind evidence, oral evidence (properly disclosed beforehand to avoid surprise) may be preferable to the use of affidavits or statements. Relatively uncontentious evidence, especially that which draws together sequences of events, may be better adduced in writing. In some cases, it may be that the interlocutory process of evidence exchange will be influenced by the need for the parties to have a very precise understanding of the evidence intended to be given if mediation or early settlement is likely to be successful. Much will depend upon the nature of the case and the practice in the relevant NPA. What is to be aimed at above all is consistency of approach within NPAs. Therefore, it is to be expected that NPA practice notes, to the extent necessary, will deal with this topic.

11.6 In considering the question of written evidence the parties should attempt to eliminate the use of unnecessary or prolix affidavits. Parties should consider exchanging proofs of evidence of witnesses at an early stage. Such proofs do not have to be in admissible form and may not require large expense in preparation. They can be exchanged to show the nature of the case to be met; and they will usually be exchanged under order of the Court that prohibits cross-examination upon them or their tendering, except with the leave of the Court.

11.7 The proper choice of what evidence to lead and the best way to lead it is a central responsibility of the parties, their lawyers and most particularly the advocates retained to run the hearing.

11.8 Parties should limit the number of witnesses they rely on to the minimum necessary to prove or disprove those issues truly in dispute.

11.9 Parties should also be familiar with the requirements and information set out in the Expert Evidence Practice Note (GPN-EXPT), Survey Evidence Practice Note (GPN-SURV) and Subpoenas and Notices to Produce Practice Note (GPN-SUBP), which are available on the Court's website.

12. ANY FURTHER INTERLOCUTORY STEPS

12.1 Interlocutory hearings should be kept to a minimum. In many cases there should be no need for them. Most interlocutory disputes can be avoided or resolved through proper dialogue between the parties and their legal representatives. Where necessary or appropriate the parties should consider the use of court registrars for mediations or confidential conferences over nascent interlocutory disputes.

12.2 Before an interlocutory dispute is listed for hearing the Court would expect that the parties or their legal representatives have conferred in good faith for the purpose of avoiding the need for intervention by the Court and to identify and narrow the issues in dispute. This will involve (other than in genuine *ex parte* or confidential applications) the moving party raising the relevant issue with the responding party with reasonable notice, and the responding party giving genuine consideration to the issue and responding in good faith, before the matter is raised with the Court.

12.3 If there is a dispute of substance that cannot be resolved between the parties, the Court will usually set a timetable for the filing and service of supporting material and written submissions limited in page-length. The matter will be dealt with, wherever possible, without the need for appearances and oral argument so that the issue can be determined swiftly "on the papers". If the matter can be addressed shortly, orally and without detailed evidence, the parties should consider that approach.

12.4 Court registrars may be utilised, where appropriate, to assist in case management and to facilitate a co-operative dialogue between the parties.

13. PRE-TRIAL CASE MANAGEMENT HEARING

13.1 A pre-trial case management hearing will generally be held, where appropriate, approximately 3 weeks prior to the scheduled trial date, with the lawyers involved in the case including the advocates retained to run the case and, if appropriate, the parties attending. The pre-trial case management hearing is an opportunity for the parties and the Court to deal with any outstanding matters or applications before the start of the trial.

13.2 Prior to any pre-trial case management hearing, it is expected that the parties will have conferred in an effort to identify and agree on the most efficient trial process and proposed pre-trial orders for consideration by the Court. Proposed orders should be forwarded to the docket judge as soon as possible before the case management hearing (preferably by the working day before that hearing).

13.3 At the pre-trial case management hearing, the parties will be expected to have considered, and be in a position to properly address the Court on, the following issues:

(a) whether all efforts have been exhausted to resolve the disputes between the parties through ADR or whether a mediation or other ADR process is warranted prior to trial;

(b) whether all pleadings or pleading materials are finalised;

(c) whether all interlocutory steps are concluded, including evidence and any subpoena processes;

(d) how the trial will best be managed, including an accurate estimate of the hearing time, the order and timing of witnesses (including any agreed "chess-clock" approach) and any special requirements relating to witnesses (eg. availability, video link requests, the need for interpreters etc).

14. WRITTEN SUBMISSIONS AND LIST OF AUTHORITIES

14.1 Written submissions can be a very useful method of shortening addresses in both final and interlocutory hearings. Sometimes, however, their usefulness is limited by how they are prepared. They should be seen as a way of summarising and simplifying issues to assist the Court, especially assisting the Court in writing a judgment. Wherever possible, the parties should attempt to agree on and use common headings for the parties' written submissions. To ensure their utility, written submissions should be signed by, and be the responsibility of, the advocate who is to address the Court at the relevant hearing. Voluminous, repetitive and prolix submissions may be rejected by the Court with consequential costs orders.

14.2 Parties and their lawyers should be familiar with the requirements and information set out in the List of Authorities and Citations Practice Note (GPN-AUTH).

15. PARTIES' CONDUCT AND COMMUNICATION WITH THE COURT

15.1 At all times, parties are expected to communicate courteously with each other, the Court and all Court staff.

15.2 In their communication with chambers staff of a judge or registrar, unless in the nature of an *ex parte* application, parties should only communicate with chambers where it is appropriate to do so, and such communications must always be open and uncontroversial. Communications with chambers staff of a judge or registrar must only occur with the prior knowledge or consent of all other parties to the proceeding where any issue of controversy exists or is likely to arise in respect of the issue being addressed. In these circumstances, this is not satisfied by mere copying in of others to the communication, which may be adequate in entirely uncontroversial communications.

15.3 For further information about communicating with the Court, parties and their lawyers are referred to the following guides on the Court's website:

- Guide to Communications with Chambers Staff;
- Guide to Communications with Registry Staff.

16. JUDGMENT

16.1 The Court aims to deliver judgment as soon as is reasonably practicable. In the ordinary course (and subject to the size and complexity of the matter) the Court will endeavour to deliver judgment resolving the substantive dispute within 3 months of the receipt of the final submissions. If a judgment is not forthcoming within 6 months, the Court will inform the parties of the anticipated time for delivery of judgment.

16.2 If a party wishes to make an enquiry about a reserved judgment, all parties should be told of the wish to make the enquiry. The enquiry is best directed through the Law Society or Bar Association in the relevant registry or to the Chief Justice directly. It is not appropriate for parties or their lawyers to contact a judge's chambers directly about such an enquiry.

17. COSTS

17.1 The Court recognises that the determination of the quantum of costs for a successful party should not be delayed. To this end the Court will:

- where appropriate, facilitate the making of lump-sum costs orders at the determination of, or as soon as possible after determination of, liability and quantum, with the assistance of registrars (as taxing officers, referees or mediators); or
- where a lump-sum costs order is not made the Court will endeavour to deal with costs issues promptly upon the filing of bills of costs (within 30 - 60 days, depending upon their complexity) using, where possible, ADR processes to resolve issues.

17.2 Guidance as to costs procedures is available in the Costs Practice Note (GPN-COSTS), including information concerning applications for lump-sum costs.

18. FURTHER PRACTICE INFORMATION AND RESOURCES

18.1 Further information about practice and procedure, including NPA-specific information and guidance as to the preparation of court-related documents, is available on the Court's website.

18.2 Further information to assist litigants, including a range of helpful guides, is also available on the Court's website. This information may be particularly helpful for litigants who are representing themselves.

Enquiries and Contact Information

18.3 General queries concerning practice and procedure should be raised, at first instance, with your local registry. If a registry officer is unable to answer your query, please ask to speak to the NCF Coordinator in your local registry.

J L B ALLSOP
Chief Justice
20 December 2019