

Practice note DC (Civil) No. 4

Proceedings Under the Property (Relationships) Act 1984 and Family Provision Act 1982

This practice note is issued under sections 56 and 57 of the Civil Procedure Act 2005.

1. Commencing Proceedings

1.1 A plaintiff must not commence proceedings until they are ready to comply with the Uniform Civil Procedure Rules and this practice note for preparation and trial

1.2 Rule 6.3(g) of the Uniform Civil Procedure Rules requires that proceedings under the Property (Relationships) Act be commenced by statement of claim.

1.3 Proceedings under the Family Provision Act should be commenced by summons.

1.4 Before commencing an action or filing a defence, legal practitioners must give their clients notice in writing about the requirements of this practice note and the Court's insistence on compliance with its orders. That notice must state that the Court may dismiss actions or cross claims or strike out defences if orders are not complied with and that the Court may make costs orders against parties who fail to adhere to timetables.

2. Preparation for Trial

2.1 Evidence is to be given by way of affidavit.

- 2.2 The parties must enter into a timetable for the conduct of the case at or before the first directions hearing. The timetable must be drafted specifically for each case. It must include all steps necessary to ensure that the case will be ready to be referred to mediation or listed for trial or arbitration as soon as possible.

3. Directions Hearings

- 3.1 The Court will list all matters under these Acts for a directions hearing before the Court at Sydney about six weeks after the proceedings are commenced.
- 3.2 For proceedings commenced at registries other than Sydney, the Court will conduct the directions hearing using telephone conferencing facilities. The Registrar will endorse the time and date for the directions hearing on the originating process. The parties and/or their legal representatives should attend the Court House at which the originating process is filed at the time appointed for the directions hearing.
- 3.3 A legal practitioner with full knowledge of the proceedings should represent each party at the directions hearing. That legal practitioner must have sufficient instructions to enable the Court to make all appropriate orders and directions.

4. Trial

- 4.1 The Court anticipates that every appropriate matter will be referred to mediation or arbitration.
- 4.2 The parties must not ask the Court to fix matters for trial unless they are ready because the Court will only grant adjournments if there are very good reasons.

5. Settlement

- 5.1 If the parties in a country matter file terms of settlement which contain orders for declarations, the Registrar will send the terms to Sydney for the Court to make the orders.

The Hon. Justice R.O. Blanch A.M.
Chief Judge
9 August 2005