

PRACTICE DIRECTION NUMBER 2 OF 2017

SUPREME COURT OF QUEENSLAND

REPRESENTATIVE PROCEEDINGS

1 Introduction

- 1.1 Representative proceedings under part 13A of the *Civil Proceedings Act 2011* (“the Act”) commonly described as class actions present complexities which are unique compared to other forms of civil and commercial litigation.
- 1.2 This Practice Direction is designed to facilitate the management of representative proceedings. There are a number of features which are designed to assist in their prompt and efficient resolution.
- 1.3 Once a representative proceeding has been commenced, the Chief Justice in consultation with the Senior Judge Administrator will assign a particular Supreme Court judge to manage the proceeding.
- 1.4 Subject to any direction from time to time by the Senior Judge Administrator, it is intended that the judge assigned will also determine all interlocutory applications, conduct the trial of any common questions that may arise and give directions for the determination of the remaining questions.
- 1.5 Representative proceedings will be managed by way of case conferences, which will be a more informal procedure than a directions hearing. This is designed to promote discussion between the parties and the judge to whom the proceedings are assigned with a view to exploring the best method of bringing the case to a hearing. The case conferences can, if appropriate, take place by video link or by telephone.

2 Commencement

This Practice Direction commences on the commencement of the *Limitation of Actions (Child Sexual Abuse) and Other Legislation Amendment Act 2016*, part 3 division 1.

3 Application

This Practice Direction applies to representative proceedings under part 13A of the Act.

4 General

- 4.1 Words and expressions in this Practice Direction have the meanings given to them in s 103A of the Act.
- 4.2 Subject to part 13A of the Act, the *Uniform Civil Procedure Rules 1999* apply to representative proceedings.
- 4.3 The aim of this Practice Direction is to facilitate the just and expeditious resolution of the real issues in representative proceedings at a minimum of expense by ensuring that the issues in contest are identified at an early date and that representative proceedings are not unnecessarily delayed by interlocutory disputes.
- 4.4 To provide maximum flexibility in bringing representative proceedings to trial and their prompt disposal at trial, the provisions of the following Practice Directions will not apply except to the extent the judge managing a particular proceeding orders to the contrary:
 - (a) 2012/11 Supervised Case List;
 - (b) 2011/10 Use of technology for the efficient management of documents in litigation;
 - (c) 2002/03 Commercial List.
- 4.5 Any practitioner who anticipates problems in complying with any aspect of this Practice Direction is to raise the matter with the Court as soon as practicable to comply with obligations imposed by rule 5 of the *Uniform Civil Procedure Rules 1999*.

5 Commencement of proceedings

- 5.1 Representative proceedings are to be commenced by claim in the Supreme Court in accordance with the Act and the *Uniform Civil Procedure Rules*.
- 5.2 In addition to the requirements of chapter 2, part 3 of the Uniform Civil Procedure Rules, the claim must comply with the requirements of s 103F(1) of the Act, namely:
 - (a) describe or otherwise identify the group members either by name or characteristic;

- (b) specify the nature of the claims and the relief sought by the representative party on his or her own behalf and on behalf of the group members;
- (c) specify the common questions of law or fact which are said to arise in the proceedings.

5.3 The claim must also contain a notation that the proceedings will be listed for an initial case conference at a date to be fixed by the judge to whom the proceeding is assigned.

6 Assignment of proceedings

6.1 When a proceeding is started, the plaintiff must email a copy of the originating process together with the known contact details of the parties to the proceeding to the Civil List Manager.

6.2 The proceeding will be made returnable for an initial case conference before the judge to whom it has been assigned (“the presiding judge”).

7 Case conferences

7.1 Representative proceedings will be managed by the presiding judge.

7.2 There will be an initial case conference and subsequent case conferences at times determined by the presiding judge in consultation with the parties.

7.3 The parties are encouraged to file a joint position paper in advance of each case management conference, listing the major points the parties anticipate raising and outlining their respective positions on each issue in one to three sentences.

8 The initial case conference

8.1 The parties should be in a position to deal to the extent possible with the following matters at the initial case conference:

- (a) whether there is any dispute that the proceedings are representative proceedings for the purpose of part 13A of the Act;
- (b) any issue concerning the description of group members;
- (c) any issue concerning the identification of the common questions of fact or law in the originating process;

- (d) any other issues concerning the adequacy of the originating process;
- (e) a timetable for the service of defences, cross-claims and further pleadings;
- (f) disclosure and document management;
- (g) whether any security for costs will be sought and if so the amount, manner and timing of the provision of such security;
- (h) whether the matter should be referred for alternative dispute resolution; and
- (i) any protocol for communication with unrepresented group members.

8.2 At or prior to the initial case conference each party will be expected to disclose any agreement by which a litigation funder is to pay or contribute to the costs of the proceeding, any security for costs or any adverse costs order. Any funding agreement disclosed may be redacted to conceal information which might reasonably be expected to confer a tactical advantage on the other party.

9 Subsequent case conferences and further interlocutory steps

9.1 It may not be possible to deal with all the matters referred to in [8] above at the initial case conference. To the extent that it is not possible to do so, those matters will be dealt with at a subsequent case conference or conferences at a time or times fixed by the presiding judge after consultation with the parties. The following additional matters will be dealt with at subsequent case conferences:

- (a) The date before which a group member may opt out of the proceeding (s 103G(1) of the Act).
- (b) The form and content of the notice to group members advising of the commencement of the proceeding and their right to opt out of the proceeding before a specified date (s 103T(1)(a) of the Act) (“the opt out notice”).
- (c) The manner of publication and dispatch of the opt out notice.
- (d) The extent of disclosure.
- (e) The steps necessary for the determination of the representative party’s claim and the common questions including:

- (i) the provision of witness statements; and
- (ii) the provision of expert evidence and the manner that such evidence will be taken.
- (f) Such further directions as may be necessary.
- (g) The date of the hearing.

9.2 The form, content and manner of distribution of the opt out notice is required to be approved by the Court (s 103U(1) of the Act). The representative party within seven days following the initial case conference or such further time as directed by the presiding judge should file and serve:

- (a) a draft opt out notice;
- (b) draft orders with respect to the proposed manner and timing of giving the opt out notice;
- (c) information as to the anticipated costs of giving the opt out notice in the manner proposed; and
- (d) a draft order as to the payment of costs of giving the opt out notice if not to be borne by the representative party.

10 Interlocutory disputes

In the event that agreement cannot be reached on the matters referred to in [8] and [9] above or any other interlocutory matter at the case conferences, the presiding judge:

- (a) after hearing from the parties may make such directions as he or she thinks appropriate; or
- (b) may direct that an application and to the extent necessary a supporting affidavit be filed in respect of the matters in dispute and fix a date for an interlocutory hearing on those matters.

11 Mediation

As a matter of general practice the proceedings will be referred to mediation at an appropriate time by referring order pursuant to rule 323 of the *Uniform Civil Procedure Rules*. The timing of that mediation and the identity of the mediator will be a matter for decision by the parties. In the event the parties are unable to agree on a mediator, the mediator will be selected by the presiding judge from

persons nominated by the parties. Unless otherwise agreed or ordered the costs of the mediation will be borne by each party equally.

12 Notice to group members

Subject to directions of the Court, notice is to be given to group members of the following matters in a form approved by the presiding judge:

- (a) amendment of the originating process varying the persons who may be group members (s 103H(4) of the Act);
- (b) a motion seeking dismissal for want of prosecution (s 103T(1)(b) of the Act);
- (c) proposed settlement or discontinuance of the proceedings (s 103R of the Act);
- (d) proposed withdrawal of the representative party (ss 103S(4) and 103T(1)(c) of the Act);
- (e) the payment of money into court (ss 103T(3) of the Act); and
- (f) the need for proof of individual claims in respect of a fund (s 103V(4) of the Act).

13 Issues remaining for the determination of the common questions

In the event there are any matters remaining following determination of the common questions, the presiding judge shall give direction as to the disposal of the remaining issues.

14 Third party access to Court files

Unless otherwise ordered, third party access to documents on the Court file will be dealt with in accordance with the *Uniform Civil Procedure Rules*.

Catherine Holmes
Chief Justice
27 February 2017