

CLASS 3 COMPENSATION CLAIMS PRACTICE NOTE

The present Class 3 Compensation Claims Practice Note has now been operational since 15 July 2011. The Court is undertaking a review of its terms and seeks feedback from those practising in this area on those aspects, if any, of the Practice Note, that might warrant revision. The review is being coordinated by Justice Moore as the Land Valuation Compensation List (LVC List) Judge. Set out below are a number of questions to which responses are sought for this review process. Additional suggestions/comments are also welcome.

The review is to be conducted over a period concluding at the end of April with the aim of preparing a draft Revised Practice Note for submission to the Court Users Group for comment. To assist in this process, responses to the following questions are invited to be emailed to Justice Moore's Associate at Peta.Dixon@courts.nsw.gov.au

Questions

- 1 Should matters in the LVC List be divided into two streams (one estimated to be less complex and requiring less time and procedural complication compared to the other)? If there was to be such a division, what should be the prima facie criteria to be applied to determine to which stream a particular matter should be assigned?

- 2 If there were to be two streams, should determination of the appropriate stream assigned be agreed between the parties prior to the first return date and reviewed (or determined if there was no agreement between the parties) by the LVC Judge at the first directions hearing?

- 3 If there were to be two streams, how soon after the first return date would it be appropriate to schedule a conciliation conference for less complex matters?

- 4 If there were to be two streams, would it be sufficient to mandate, for the less complex matters that the documentation for the conciliation conference ordinarily be confined to position papers exchanged by the parties prior to the conciliation conference?

- 5 If the documentation is so confined, should there be an appendix to the Practice Direction providing guidance as to length, structure and content of such position papers (including, for example, requiring the parties' valuers to deal with no more than what they regarded as their three best comparable sales)?

- 6 If there were to be two streams, would the present standard directions timetable remain appropriate or should it be changed:

- to specify that the conciliation/mediation conference should happen at a point in the timetable earlier than the present 16 weeks after the first directions hearing as contemplated by (3)? or
 - to require the parties to attend the first directions hearing prepared to discuss with the LVC Judge the expected length of the hearing if the matter does not settle, with a view to taking hearing dates at that time, rather than waiting until the second directions hearing?
- 7 If the timing of the settlement/conciliation conference is brought forward to a point earlier in the timetable in Schedule A, should it be mandated that the matter return to the LVC List the Friday following an unsuccessful s 34 conference?
 - 8 The current Practice Note does not specify that the parties should settle and file an agreed bundle of documents. Is it appropriate to incorporate such a requirement in the timetable and, if so, at what point?
 - 9 The current Practice Note specifies that the Applicant's lay evidence is to be filed and served within one week of the First Directions hearing and that the Respondent's lay evidence in reply be filed and served by the end of the following week (Schedule A(1) and (2)). Does this remain appropriate timing and, if not, what alteration should be made to the timetable in Schedule A?
 - 10 For matters that are to be significantly contested, is there a potential role for case management by the trial judge at a time earlier than the presently scheduled pre-trial mention? If so, should this be in lieu of, or in addition to, the pre-trial mention?
 - 11 Does a pre-trial mention remain necessary or, for example, could the provision of the various documents presently provided at the pre-trial mention be dealt with by the requirement to file and serve them at a specified time?
 - 12 Would there be utility in the respondent providing a short statement of those matters respondent proposes should be uncontested for the trial and, if so, what would be the appropriate timing for such a document?
 - 13 Should there be a mandated form for a joint table of s 59(1)(f) claims setting out the amounts claimed, the basis for each and, if disputed, the reasons for rejecting the item?
 - 14 When should the necessity for and scope of a site and comparable sales (and any other relevant issues) inspection be identified?
 - 15 What other changes might be considered to the Class 3 Compensation Claims Practice Note?