## **COMMERCIAL AND CORPORATIONS PRACTICE NOTE (C&C-1)**

##### Schedule 1

###### CORPORATIONS AND CORPORATE INSOLVENCY SUB-AREA

SCOPE OF SUB-AREA – CORPORATIONS MATTERS

1. The expression “corporations matters” applies to matters in the Corporations and Corporate Insolvency Sub-area and includes matters arising under or in relation to:
	* + the [*Corporations Act 2001* (Cth)](https://www.legislation.gov.au/Series/C2004A00818) (**Corporations Act**);
		+ the [*Australian Securities and Investments Commission Act 2001* (Cth)](https://www.legislation.gov.au/Series/C2004A00819);
		+ the [*Cross-Border Insolvency Act 2008* (Cth)](https://www.legislation.gov.au/Series/C2008A00024) (**Cross Border Insolvency Act**); and
		+ all corporate insolvency matters, but not personal bankruptcy matters (the latter being in the General and Personal Insolvency Sub-area).

OPERATION OF SUB-AREA

1. The Commercial and Corporations Practice Note (C&C-1) (to which this schedule is attached) applies to all corporations matters.

Corporations Judges

1. All registries nationally have dedicated corporations judges. The [corporations judges](http://www.fedcourt.gov.au/law-and-practice/national-practice-areas/commercial/judges) in each registry are set out on the Court’s website.

Weekly Corporations Lists

1. The purpose of the weekly Corporations List conducted in the registries specified below is to provide efficient triaging of corporations matters which seek relief under Ch 5 and/or Ch 5A of the Corporations Act (other than those that seek relief under Pt 5.1 of Ch 5) or under the Cross Border Insolvency Act.
2. [Corporations List](http://www.fedcourt.gov.au/law-and-practice/national-practice-areas/commercial/corporate-insolvency#list)s are conducted in the New South Wales, Victorian, Queensland and West Australian registries. They operate on consistent NCF principles for corporations matters and according to the workflow and needs of the particular registry. At present there is no weekly Corporations List in the South Australian registry because there are insufficient filings to justify running a separate list.
3. On the return date for an application (which will be in accordance with the allocation procedure for the weekly Corporations List (see below) or otherwise generally between 2 – 5 weeks from the date of filing), depending on the needs of the parties and the character of the matter, the corporations judge will either substantively determine the matter or deal with any case management, interlocutory or procedural matters that arise and explore the suitability of making a mediation order.
4. Shorter corporations matters (e.g. an application for extension of a convening period for a meeting of a company’s creditors) will likely be dealt with on the return date or soon after. Longer matters will be programmed for hearing and allocated to a docket judge for hearing on a date to be fixed by that judge or, in some cases, may be allocated upon filing to a docket judge, for example where an application seeks both relief for breach of directors’ duties and for voidable transactions. For larger or more complex corporations matters, parties should consider whether the innovative case management procedures set out in the Commercial and Corporations Practice Note may be applied.
5. If the matter is allocated to a docket judge, rather than made returnable in the weekly Corporations List, the parties will be notified of the date for a first case management hearing by the docket judge. In the South Australian registry, in which there is presently no weekly Corporations List, all corporations matters will be allocated to a docket judge.
6. In all registries, more urgent matters may be referred to the Commercial and Corporations Duty Judge.

New South Wales and Western Australia

1. The Corporations List in New South Wales and Western Australia is conducted at 9.30 am (local time) on Thursday of each week. Corporations matters filed in the New South Wales and Western Australian registries will be returned in the weekly Corporations List as follows:
	1. applications filed on or before 12 noon on a Wednesday in any week will be returned in the Corporations List for the Thursday of the next week; and
	2. applications filed after 12 noon on a Wednesday in any week will be returned in the Corporations List for the Thursday of the week after the next week.

Queensland and Victoria

1. The Corporations List in Queensland and Victoria is conducted at 9.30 am (local time) on Friday of each week. Corporations matters filed in the Queensland and Victorian registries will be returned in the weekly Corporations List as follows:
	1. Applications filed on or before 12 noon on a Thursday in any week will be returned in the Corporations List for the Friday of the next week; and
	2. Applications filed after 12 noon on a Thursday in any week will be returned in the Corporations List for the Friday of the week after the next week.

Urgent applications – Commercial and Corporations Duty Judges

1. The following originating corporations applications may be dealt with by the Commercial and Corporations Duty Judge:
* any urgent Commercial and Corporations NPA matters (other than matters under the *Bankruptcy Act 1966* (Cth) in relation to which see the General and Personal Insolvency Practice Notice (GPI-1));
* *ex parte* applications in respect of corporations matters, such as abridgement of time for service, interlocutory injunctions, search and freezing orders;
* any other application that may arise in respect of a corporations matter that is not conveniently accommodated by filing a corporations matter in the usual way; and
* so far as is practicable, a referral from a registrar’s corporations list on the same day the application is listed for hearing before a registrar.
1. Originating commercial and corporations duty matters will be heard by dedicated commercial and corporations judges who will be regularly available to the parties for genuinely urgent matters, based on a regular roster system. These applications will be listed and heard separately to the Corporations List, although once the urgent aspects of a matter are resolved it may be appropriate to place it in the Corporations List for case management or resolution in the usual way.
2. Arrangements for hearing urgent originating applications in respect of Commercial and Corporations Duty Judge matters and relevant contact information are set out in Part 4 of the Commercial and Corporations Practice Note.

Urgent Interlocutory Applications

1. Urgent interlocutory matters that arise after a matter has been allocated to a docket judge will be heard by that judge as set out in Part 4 of the Commercial and Corporations Practice Note.

FILING APPLICATIONS AND SUPPORTING MATERIAL

1. When filing an originating application in a corporations matter, an originating process should be used (Form 2 of the [*Federal Court (Corporations) Rules* *2000* (Cth](https://www.legislation.gov.au/Series/F2002B00094)) (“**Corporations Rules**”)).
2. When filing an interlocutory application in a corporations matter, an interlocutory process should be used (Form 3 of the Corporations Rules). This includes interlocutory applications seeking final relief, such as:
	1. a claim by a defendant in the nature of a cross-claim;
	2. a claim for indemnity by the Commissioner of Taxation against a company director where certain payments have been set aside (see s 588FGA(4) of the [Corporations Act](https://www.legislation.gov.au/Series/C2004A00818) and *Condon v Commissioner of Taxation* [2004] NSWSC 481).
3. In some circumstances it may not be immediately apparent to a filing party whether an application should be properly commenced by way of an interlocutory process (brought within a current or pre-existing proceeding in this Court) or an originating process (commencing a new proceeding). This can be an important decision which may affect the case management of the matter and the applicable filing fee.

Prescribed Circumstances

1. Whether an interlocutory or originating process should be filed may be prescribed by relevant Acts or Rules, namely the [Corporations Act](https://www.legislation.gov.au/Series/C2004A00818), the [*Federal Court Rules*](https://www.legislation.gov.au/Series/F2011L01551) *2011* (Cth) (“**Federal Court Rules**”) and the [Corporations Rules](https://www.legislation.gov.au/Series/F2002B00094). The following are two (non-exhaustive) illustrations where the form of the application is prescribed:
	* + *Originating process required* – an application concerning an act or omission of a receiver, or a controller appointed by the Court (see s 423(1)(b) of the [Corporations Act](https://www.legislation.gov.au/Series/C2004A00818) and r 4.1 of the [Corporations Rules](https://www.legislation.gov.au/Series/F2002B00094));
		+ *Interlocutory process required* – seeking a determination of a liquidator's remuneration (See s 473(b)(ii) of the [Corporations Act](https://www.legislation.gov.au/Series/C2004A00818) and r 9.4(2)(a) of the [Corporations Rules](https://www.legislation.gov.au/Series/F2002B00094)).

Non-prescribed Circumstances

1. In circumstances where the relevant Acts or Rules do not expressly prescribe which type of application should be used, regard should be had to the following when deciding whether it is appropriate to file an interlocutory process (rather than an originating process) in a current or pre-existing proceeding:
	1. whether the parties in the earlier proceeding and the application are common;
	2. the legal and factual nexus between the earlier proceeding and the application;
	3. whether the earlier proceeding has been finally determined; and
	4. the length and complexity of the application.

Request for Pleadings

1. Given that originating and interlocutory processes are accompanied by supporting affidavits, any application seeking an order for pleadings should be included in an originating or interlocutory process. An originating or interlocutory process should not be amended so as to be converted into a pleading.

OPPRESSIVE CONDUCT OF AFFAIRS OF A COMPANY

1. Subject to options available to parties as set out in the Commercial and Corporations Practice Note, applications for relief under s 233 of the [Corporations Act](https://www.legislation.gov.au/Series/C2004A00818)(whether or not other relief is sought) are to be made by originating process supported by an affidavit which:
	1. should be as brief as possible and in any event no more than 5 pages in length;
	2. sets out a clear and succinct summary of the facts alleged to constitute the acts of oppression;
	3. exhibits only a current ASIC search of the company, and no other exhibits.
2. In all cases, the application will first be returnable before the Commercial and Corporations Duty Judge. Unless urgent interlocutory relief is sought, the first return date will be approximately 4 weeks from the date of filing. The parties (as well as their legal representatives) will be expected to attend that hearing.
3. At that initial hearing, in addition to the case management imperatives (referred to in paragraph 6.7 of the Commercial and Corporations Practice Note) the parties will be expected to have considered the following and be in a position to address the Court on:
	1. whether the matter can be resolved at that hearing and, if so, on what terms;
	2. what steps, if any, are necessary before the matter can be resolved (eg. access to the books of the company, a valuation required etc);
	3. what information, if any, is required before the dispute can be resolved, and why.
4. If the matter does not resolve at that initial hearing, the matter will usually be referred to a registrar for mediation. In the event that the matter does not settle at the mediation, the registrar may conduct a case management conference immediately following the mediation to consider the most economic and efficient means of proceeding to and conducting the trial, at which conference the registrar may make case management orders.

CORPORATIONS MATTERS BEFORE A REGISTRAR

1. A significant proportion of corporations matters are heard and determined by registrars of the Court. This includes winding up applications, applications to set aside a statutory demand and examinations pursuant to ss 596A and 596B of the [Corporations Act](https://www.legislation.gov.au/Series/C2004A00818). Corporations matters within the delegated jurisdiction of a registrar are set out in
Schedule 2 of the [Corporations Rules](https://www.legislation.gov.au/Series/F2011L01551).
2. Arrangements for hearing corporations matters before a registrar and relevant information for [registrar corporations lists](http://www.fedcourt.gov.au/law-and-practice/national-practice-areas/commercial/corporate-insolvency#registrar_list) in each registry is available on the Court’s website