# DUTY (URGENT) APPLICATIONS INTERIM PRACTICE NOTE DURING 3 Region Trial (GPN-DUTY)

## General Practice Note

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### Introduction

This Practice Note sets out the process for parties (whether or not represented and including litigants in person) to apply to a Duty Judge for urgent relief. This Practice Note will apply during the period in which the Court is trialling a new system for organising the way in which duty matters are managed by the Court during the Court term. The trial will commence on 3 February 2025.

During the trial, the new duty system will operate by reference to three duty regions (the **Three Region Duty Trial**). Each region is comprised of a number of registries and each will operate according to its own independent duty roster.

Region 1 is comprised of the New South Wales and Australian Capital Territory registries. Region 2 is comprised of the Victorian, Queensland and Tasmanian registries. Due to the volume of duty matters heard in Region 1 and Region 2, each of these regions will operate two streams of duty that will be run concurrently with at least one Duty Judge rostered in each stream for each day of the Court term. The two streams are General Duty and Commercial and Corporations Duty (C&C Duty). The demarcation between the two streams is addressed in this Practice Note.

Region 3 is comprised of the Western Australian, South Australian and Northern Territory registries. Due to the lesser volume of duty matters in Region 3, a single combined Duty Roster will operate with at least one Duty Judge rostered on for each day of the Court term.

Summer Duty (being duty in the non-sitting period between the end of the Court term in one year and the commencement of the Court term in the next year) will continue to operate in accordance with the Court’s existing Summer Duty Roster during the period of the Three Region Duty Trial.

This Practice Note takes effect from 3 February 2025 and, to the extent practicable, applies to all proceedings, whether filed before or after the date of commencement.

### 2. Relationship between this Practice Note and other Practice Notes

2.1 This Practice Note is to be read together with:

(a) the Central Practice Note (CPN-1);

(b) the Enforcement, Endorsement and Contempt Practice Note (GPN-ENF) – Part 4, which addresses the requirement for, and procedure in relation to, the endorsement of orders with penal notices where breach of the orders attracts quasi-criminal consequences;

(c) any applicable NPA Practice Notes which address the making of urgent applications; and

(d) the following Practice Notes (which address some forms of relief commonly the subject of duty applications):

(i) where injunctive relief is sought (whether in proposed or existing proceedings), the Usual Undertaking as to Damages Practice Note (GPN-UNDR) (Part 2);

(ii) where a freezing order is sought (whether in proposed or existing proceedings), the Freezing Orders Practice Note (GPN-FRZG) and the Usual Undertaking as to Damages Practice Note (GPN-UNDR); and

(iii) where a search order is sought (whether in proposed or existing proceedings), the Search Orders Practice Note (GPN-SRCH) and the Usual Undertaking as to Damages Practice Note (GPN-UNDR).

(iv) where injunctive relief is sought in relation to a person’s removal or deportation from Australia, the Migration Practice Note - Removal from Australia of Immigration Detainees who have Proceedings before the Court (MIG-2).

### 3. Definitions

3.1 In this Practice Note:

*Admiralty and Maritime List Judge* means a Judge referred to in the list at Urgent Admiralty and Maritime Applications.

*After Hours* means:

* + - * 1. before 8.30am on any weekday;
				2. after 5pm on any weekday; and
				3. after 5pm on any Friday until before 8.30am local time on Monday.

*After Hours Duty Registrar* means a Registrar who is rostered to be available to receive and triage urgent duty applications which are first notified After Hours who is contactable using the phone number published on the Daily Court List.

*Business Hours* means between 8.30am and 5pm on weekdays.

*Case Management Judge* means the Judge to whom a proceeding (including an appeal) has been allocated for case management.

*Central Practice Note* means the Central Practice Note: National Court Framework and Case Management (CPN-1).

*Certificate of Urgency* means a certificate in the form of Form NCF10 provided in support of a request for an application (or part of an application) to be heard on an urgent basis by a Duty Judge in accordance with paragraph 6.1 of this Practice Note.

*Combined Duty Stream* means the single duty stream in which all duty applications in Region 3 are listed.

*Commercial and Corporations Duty Applications* means only those Duty Applications in which the principal final relief sought is most closely connected to one or more of the following five Sub-areas of the Commercial and Corporations National Practice Area:

1. Commercial Contracts, Banking, Finance and Insurance;
2. Corporations and Corporate Insolvency;
3. Regulator and Consumer Protection;
4. Economic Regulator, Competition and Access; and
5. Commercial Arbitration.

All other Duty Applications are to be commenced as General Duty Applications.

*Commercial & Corporations (C&C) Duty Stream* means the duty stream in which Commercial and Corporations Duty Applications are listed.

*Daily Court List* means the daily list, published on the Court’s website after 4pm each weekday, of all matters listed for hearing on the next day in each registry of the Court (see link).

*Docket Judge* in relation to a particular proceeding at first instance means the Judge to whom the proceeding is allocated to manage and determine.

*Duty Application* means an application that in the opinion of the Duty Judge to whom the application is made, on the basis of the Certificate of Urgency provided by the applicant, is attended by sufficient urgency to justify the application (or part of the application) being determined by a Duty Judge on an urgent basis thus taking the application outside the usual Docket and/or Specialty List Arrangements.

*Duty Judge* means a Judge who is named as Duty Judge on the Daily Court List.

*Duty Regions* means:

1. Region 1: the New South Wales and Australian Capital Territory registries;
2. Region 2: the Victorian, Queensland and Tasmanian registries; and
3. Region 3: the Western Australian, South Australian and Northern Territory registries.

*General Duty Applications* means all Duty Applications which are not Commercial and Corporations Duty Applications. Note, a Duty Application in which the principal final relief sought falls within the General and Personal Insolvency Sub-area of the Commercial and Corporations NPA is a General Duty Application. If, after completing the Certificate of Urgency, an applicant is in doubt as to whether an application is a General Duty Application or a Commercial and Corporations Duty Application, the application should first be brought to the attention of the General Duty Judge.

*General Duty Stream* means the duty stream in which General Duty Applications are listed.

*Judge* means a Judge of the Federal Court of Australia.

*NPA* means a National Practice Area of the Federal Court of Australia (see link).

*Registrar* means a Registrar of the Federal Court of Australia.

*Remote Hearing* means a hearing conducted other than in person and conducted using audio and/or audio-visual technology.

*Specialty List Arrangements* means the listing arrangements that apply for proceedings allocated to the following lists:

1. Admiralty & Maritime List – see Urgent Admiralty and Maritime Applications;
2. Commercial Arbitration List – see the Commercial Arbitration Practice Note (CA-1);
3. Corporations List – see the Commercial and Corporations Practice Note (C&C-1);
4. Insurance List – see the Commercial and Corporations Practice Note (C&C-1) Schedule 2;

*Summer Duty Period* means the period between the first day after the end of the Court term and the last day before the first day of the next Court term during which period the Summer Duty Roster operates in all registries.

*Summer Duty Roster* means the duty roster published on the Daily Court List in the Summer Duty Period.

### Procedure where an urgent hearing is requested

If your application is in an existing proceeding, refer to paragraph 4.3.

If your application is not in an existing proceeding, refer to paragraph 4.6 and following.

#### Where the application is in an existing docketed proceeding or a proceeding under the control of a Case Management Judge

If you have an urgent application in an existing proceeding under the management of a Docket Judge or Case Management Judge, you **must** approach the Docket Judge or Case Management Judge **before** approaching a Duty Judge. If the Docket Judge or Case Management Judge is unable to deal with the application, you may approach a Duty Judge, who will then consider whether the application (or part of it) is of sufficient urgency to be heard by a Duty Judge.

Where the application is made After Hours, the applicant is to contact the After Hours Duty Registrar who will triage the application and if necessary contact the Chambers of either the Docket Judge or Case Management Judge or if necessary, the relevant Duty Judge.

If the applicant is unable to reach the Chambers of the Docket Judge or Case Management Judge or is otherwise directed to do so by the Docket Judge or Case Management Judge, the applicant is to contact the Chambers of the relevant Duty Judge. In such circumstances, the applicant is required to certify that an approach has been made to the Docket Judge or Case Management Judge in the first instance and provide brief details of why it is necessary for the application to be made before a Duty Judge – see paragraph 6.1 below.

#### Preparatory Steps in front of a Duty Judge

An applicant (or the applicant’s legal representative) who requests an urgent hearing before a Duty Judge must be thoroughly familiar with this Practice Note.

Litigants in person may wish to access free legal assistance. The Court is unable to provide legal advice.

All requests for an urgent hearing as a duty application must be accompanied by a Certificate of Urgency – see paragraph 6.1 below and Form NCF10.

For applicants in Region 1 and Region 2, the choice of whether to apply to the General Duty Judge or the Commercial and Corporations Duty Judge will be informed by the identification of the NPA (and where applicable, Sub-area) with which the substantive proceeding is most closely connected. The applicant must identify this NPA (and where applicable, Sub-area) in the Certificate of Urgency, which must be provided to the Duty Judge to whom the application is made – see paragraph 6.1 below.

The Court’s nine NPAs and Sub-areas are listed on the Court’s website.

An example of a way in which to identify the most closely connected NPA (and Sub-area) in a proceeding that has some connection with more than one NPA is as follows.

Assume an application for injunctive relief is brought in a matter which involves a senior employee alleged to have taken confidential information to a competitor and who is now employed by the competitor. The final relief is primarily based on allegations of breach of contract of employment with questions as to construction and enforceability of a cascading restraint clause but also includes a claim for compensation based on an alleged breach of duty under the *Corporations Act 2001* (Cth).

Notwithstanding that the final relief includes a claim under the Corporations Act, the NPA with which the substantive proceeding is most closely connected is the Employment & Industrial Relations NPA. In these circumstances, the urgent duty application (the injunction) should be made by contacting the General Duty Judge, who will assess whether the application is sufficiently urgent to be heard as a General Duty Matter.

#### Initial contact with the Court in Duty Applications

An applicant (or the applicant’s legal representative) who wishes to request an urgent hearing must make contact with the Court as soon as reasonably possible.

The relevant point of contact to make a request for an urgent hearing varies depending on the circumstances of the application:

**Urgent applications in existing matters:**

(a) Refer to paragraph 4.3 above – the point of contact is the Chambers of the Docket Judge or Case Management Judge, **not** the Chambers of the Duty Judge.

**Litigants in person and corporations without legal representation:**

(b) Litigants in person and corporations without legal representation wishing to request an urgent hearing must contact the Registry using the contact details provided for litigants in person in the Daily Court List.

(c) Corporations should be aware that under rule 4.01(2) of the Federal Court Rules 2011 (Cth) a corporation must not proceed in the Court other than by a lawyer, although the Court may dispense with compliance with this rule in some circumstances, if satisfied it is appropriate to do so.

**Legally represented applicants:**

(d) Where the initial contact with the Court is made during **Business Hours** for an application in a new proceeding or a proceeding which has been filed but not yet docketed, the relevant point of contact is the Chambers of the relevant Duty Judge.

(e) Where the initial contact with the Court is made **After Hours** the relevant point of contact is the After Hours Duty Registrar who will triage notifications received After Hours and liaise as necessary with the Chambers of the relevant Duty Judge.

Note: The contact details for the Duty Judges and the After Hours Duty Registrar are in the Daily Court List for each registry which is published on the Court’s website.

**Urgent application is in or will be in the Admiralty & Maritime List:**

(f) For Information in relation to urgent applications for the arrest or release of a vessel and other urgent admiralty and maritime applications see Urgent Admiralty and Maritime Applications.

(g) The contact details for the Admiralty & Maritime List Judges and Admiralty Registrars are available at Urgent Admiralty and Maritime Applications.

(h) See also the Admiralty and Maritime Practice Note (A&M-1).

### Information to be provided at the time of initial contact with the Court in relation to Duty Applications

If an urgent hearing is requested, the applicant (or the applicant’s legal representative) must provide the following information to the extent possible when first contacting the Court:

(a) the parties’ names, and if known, contact details;

(b) the legal representatives’ names and contact details, including those of counsel;

(c) brief but substantive information to justify why the application is urgent and an outline of the nature of the application;

(d) information as to whether the application is in an existing proceeding, and if so, as to steps taken to bring the matter before the Docket Judge or Case Management Judge;

(e) whether the applicant expects to file affidavit material (and if so, when and how much affidavit material will be filed or delivered, electronically or in hard copy, to the Chambers of the Duty Judge);

(f) preferred time and date(s) for a hearing;

(g) estimate of likely hearing time (and whether an estimate is agreed between the parties);

(h) any reason why the hearing is not suitable to proceed as a Remote Hearing if in the opinion of the Duty Judge that would be the most efficient course;

(i) whether the application is to be made on notice or *ex parte*; and

(j) confirmation that the applicant (or the applicant’s legal representative) has read this Practice Note. In the absence of such confirmation, depending on the circumstances, the Court may not list the matter until such confirmation is provided.

The information outlined in paragraph 5.1 may be given orally or by email. This information is provided on an interim basis when a Duty Application is first foreshadowed to the Chambers of the Duty Judge. The information will be supplemented by the provision of a Certificate of Urgency, which must accompany the Duty Application when the application is provided to the Chambers of the Duty Judge.

Applicants seeking an urgent hearing before a Duty Judge must complete an application form to commence an urgent matter – see sections 7 and 8 below as to the means by which an applicant may provide the application to Court for the purpose of commencing an application for urgent relief.

### Certificate of urgency

Urgent applications must be accompanied by a Certificate of Urgency (Form NCF10). The Certificate of Urgency must be signed by the solicitor or counsel for the party seeking the urgent application and provided to the Court for the attention of the Duty Judge. If an applicant is not represented, the applicant must sign the Certificate of Urgency.

### Commencing urgent applications

The key forms and processes for eLodgment of urgent applications may be accessed via the Court website: Urgent (Duty) Matters - How to Apply.

### Provision of documents in urgent applications

Urgent applications should be filed by eLodgment where time permits or otherwise emailed or delivered to the Chambers of the Duty Judge. A Judge or Registrar may direct that an application form be provided in a way other than by eLodgment.

If the application is lodged via eLodgment, the details of the lodgment are to be provided to the Chambers of the Duty Judge as soon as possible.

Details on how to lodge an urgent application via eLodgment are available at eLodgment FAQs.

In addition, any document filed must be emailed to the Chambers of the Duty Judge at or about the time they are submitted for eLodgment.

### Completion of the urgent aspect of the matter

After the urgent aspect of an application has been heard and determined, if the proceeding is ongoing, the proceeding will be allocated to a Docket Judge in accordance with the allocation principles in the Central Practice Note.

D S Mortimer

Chief Justice

31 January 2025

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