

Practice Note DC (Civil) No. 1

Case Management in the General List

This practice note is issued under sections 56 and 57 of the *Civil Procedure Act 2005* and is intended to facilitate the just, quick and cheap resolution of the real issues in all proceedings before the Court. It applies to all matters in the general list in the Sydney, Gosford and Newcastle registries commencing 7 September, 2009. This practice note supersedes and replaces the previous practice note referable to case management in the general list. As this practice note incorporates the provisions of Practice Notes DC (Civil) No. 3, No. 4, No. 9 and No. 13 those practice notes are hereby revoked.

1. Time Standard

- 1.1 The Court aims to have cases completed within 12 months of commencement.
- 1.2 Parties should expect to be allocated a trial date within 12 months of the commencement of proceedings and plan to meet this time standard.

2. Commencing Proceedings

- 2.1 Plaintiffs must not commence proceedings until they are ready to comply with the requirements of the *Uniform Civil Procedure Rules* (UCPR) and the Court's practice notes for preparation and trial. This means that, except in special circumstances, the plaintiff's preparation for trial must be well advanced before filing the statement of claim.
- 2.2 In cases under the *Motor Accidents Compensation Act 1999* or Part 2A of the *Civil Liability Act 2002*, the plaintiff should obtain evidence that

the relevant impairment threshold for damages for non-economic loss has been reached before commencing proceedings.

- 2.3 Rules 15.12 and 15.13 provide that in personal injury cases and claims under the *Compensation to Relatives Act 1897* the plaintiff must file and serve particulars and serve the supporting documentation on the defendant or the defendant's insurer or solicitor either with the statement of claim or as soon as practicable after the service of the statement of claim. In order to protect the plaintiff's privacy, the Court does not require the particulars to be served personally on the defendant.
- 2.4 If it has not already done so, the defendant must commence its preparation on receipt of the statement of claim. In a personal injury case, the defendant must start preparing for trial based on the matters alleged in the statement of claim and rule 15.12 or 15.13 particulars. The defendant's solicitor must arrange medical examinations on receipt of these documents.
- 2.5 Before commencing proceedings or filing a defence, legal practitioners must give their clients notice in writing about the requirements of this practice note and of 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 comply with its orders.
- 2.6 This practice note does not apply to a statement of claim in which a liquidated amount is claimed until a defence is filed. When a defence is filed, the Court will list the case for a pre-trial conference.

3. Proposed Consent Orders

- 3.1 The plaintiff must serve proposed consent orders for the preparation of the case on the defendant with the statement of claim. The orders must be drafted specifically for each case. They must include all steps necessary to ensure that the case will be ready to be referred to mediation and/or arbitration or listed for trial at the status conference.
- 3.2 If the defendant does not agree with the proposed orders, or wants to add additional steps, it must serve amended consent orders on the plaintiff's solicitor at least 7 days before the pre-trial conference.
- 3.3 The Court expects that, in most cases, the defendant will have requested particulars of the statement of claim, which the plaintiff will have supplied before the pre-trial conference. The defendant should also have filed and served a defence and any cross claims.
- 3.4 In a personal injury case, the Court expects that the plaintiff will have served complete rule 15.12 or 15.13 particulars and primary medical reports and have qualified the experts who will prepare reports, including any liability or economic loss expert. The Court expects that the defendant will have arranged medical examinations and issued subpoenas.

4. Representation

- 4.1 The Court requires proper representation at all appearances. If a party is legally represented, a legal practitioner with adequate knowledge of the case must represent that party whenever the case is listed before the Court. That legal practitioner must have sufficient instructions to answer the Court's questions and to enable the Court to make all appropriate orders and directions.

- 4.2 Cases should not be mentioned by consent unless they are settled or ready for a hearing date.
- 4.3 It is generally inappropriate for parties to be represented by agents or clerks. If a party is represented by an agent, that agent should have adequate instructions to deal with any questions asked by the Court.
- 4.4 If there is no proper representation, the case will either be stood down or stood over to another day to allow proper representation. The adjournment will be at the cost of the party not properly represented and usually such costs will be payable by that party's legal representative.

5. Pre-Trial Conference

- 5.1 In all cases in the case managed list, (except defamation cases, child care appeals and Family Provision cases in Newcastle) the Court will allocate a pre-trial conference date when the statement of claim is filed. The plaintiff must notify the defendant of the date and time of the pre-trial conference when the statement of claim is served.
- 5.2 The pre-trial conference will be held two months after commencement of proceedings.
- 5.3 No case may be entered into the Commercial, Construction or Professional Negligence lists before the pre-trial conference.
- 5.4 An application may be made at the pre-trial conference for a case to be placed in one of the specialist lists. Any application must be supported by an affidavit setting out the reasons for entering a case in the list. The Court will carefully consider each application, even if both parties consent.

- 5.5 Cases will generally not be put into specialist lists for case management unless they are of a significant value and/or complexity so as to require detailed management. Cases concerning a claim for less than \$150,000 and cases which do not require special case management will not usually be listed in the specialist lists. The majority of cases will be managed in the General List.
- 5.6 At the pre-trial conference, the Court will examine the orders proposed by the parties and make all appropriate directions and orders to ensure that the case is ready to be listed for hearing at the status conference. Disputes between the parties will be resolved or a hearing date fixed for a motion. The orders of the Court must be strictly complied with. Failure to comply with those orders will be treated seriously and may lead to costs orders.
- 5.7 The Court will give directions for the service of expert reports under rule 31.19 UCPR at the pre-trial conference. The parties must be able to tell the Court the precise nature of any expert evidence to be relied on and the names of all experts so that appropriate directions can be made. All reports must be served at least 28 days before the status conference.
- 5.8 In cases under the *Motor Accidents Compensation Act* 1999 or Part 2A of the *Civil Liability Act* 2002, the defendant should tell the plaintiff whether or not it agrees that the relevant threshold has been reached at or before the pre-trial conference. In a motor accident case, the proposed orders must provide for any referral to the Medical Assessment Service if the matter has not yet been referred.
- 5.9 In an appropriate case, the Court will allocate a trial or arbitration date at the pre-trial conference or refer the parties to mediation.

6. Subpoenas

- 6.1 Parties must issue subpoenas as early as possible so that documents can be produced and inspected and are available for the proper preparation of the case, including submission to experts.
- 6.2 A return date will be fixed at the pre-trial conference if the parties have not already issued subpoenas.
- 6.3 Parties should inspect all documents produced under subpoena and serve any documents on which they rely before the status conference. Parties must ensure that they follow up any non-production of documents and file any necessary notices of motion before the status conference.

7. Motions and Summonses

- 7.1 Interlocutory disputes between the parties should generally be resolved by filing a notice of motion. Parties must file any motions as soon as practicable. The parties should not wait until the next occasion when the case is before the Court to consider seeking orders or filing a motion.
- 7.2 A motion will be allocated a hearing date in the general motions list on the first available Friday and the parties should be ready to argue the motion on the first return date.
- 7.3 An Assistant Registrar will be available in court between 9.00 a.m. and 9.30 a.m. on Friday to deal with any consent orders and applications for adjournments of motions. At 9.30 a.m. the Assistant Registrar will call through the list and refer the notices of motion requiring hearing to the Judicial Registrar or Motions Judge.

- 7.4 The Judicial Registrar will allocate a hearing date to any notice of motion which the parties anticipate will require more than two hours hearing time.
- 7.5 Long motions will generally be case managed with the substantive case and will be allocated a hearing date as soon as they are ready for hearing.
- 7.6 All summonses (other than costs appeals or child care appeals) will be listed before the Judicial Registrar for case management.
- 7.7 Where there are more than two parties to the proceedings and the dispute to be resolved by way of notice of motion does not affect a party the appearance of that party may be mentioned by consent.
- 7.8 Counsel are not required to robe for the hearing of motions and summonses.
- 7.9 Affidavits in support of motions will be returned to the parties at the conclusion of the hearing of the motion.

8. Status Conference

- 8.1 All cases, except for those which for good reason cannot be heard within 12 months of commencement, will be required to take a hearing date within a period between 8 and 11 months from commencement.
- 8.2 Cases in the General List will be required to take a hearing date at the status conference even though there are still some matters to be completed before the hearing. Appropriate orders will be made.
- 8.3 Matters allocated a hearing date will generally be referred to mediation unless the parties can satisfy the Court that mediation is not appropriate.

- 8.4 When parties attend a status conference they must have instructions about mediation, details of the availability of their client, witnesses and counsel together with an estimate of the length of the case to allow a hearing or arbitration date to be fixed.
- 8.5 Any cases, except those which have a genuine need for an additional time for preparation, will be subject to an enquiry as to why they have not been prepared for hearing, orders will be made for their further preparation and costs orders will be made. In cases not ready to proceed to a hearing, the party responsible may have to show cause why the case or cross claim should not be dismissed or the defence struck out.
- 8.6 Unless orders are made at the status conference, the Court will usually not allow parties to rely on medical reports and experts' reports served later than 28 days before the status conference. Reports which are not served in accordance with the Court's orders are usually inadmissible (see rule 31.28).
- 8.7 If a case requires a conference between expert witnesses or the parties seek that expert witnesses give evidence concurrently, the parties should seek directions from the Court at the status conference.
- 8.8 The Court will generally order that final particulars under rule 15.12 or 15.13 be filed and served before the status conference.

9. Long Trial Dates

- 9.1 In cases estimated to take 5 days or more, the Court will allocate long trial dates at the status conference or any subsequent directions hearing.

- 9.2 Long cases will be referred to mediation unless the parties can satisfy the Court that the case is unsuitable for mediation. The parties must have instructions about mediation when they seek to have a long trial date allocated.
- 9.3 When a long case is fixed for trial, the Court will make every effort to ensure that it proceeds. For that reason, the Court will not adjourn long cases unless there are exceptional circumstances.
- 9.4 Cases with an estimated trial time of 2 weeks or more will be listed before the Court for case management directions. Each party should be represented on that date by counsel briefed on the trial or the solicitor with conduct of the case to enable all proper directions to be made.

10 Alternate Dispute Resolution

- 10.1 The Court will refer all appropriate cases for alternate dispute resolution under Part 4 of the *Civil Procedure Act*. The parties must have instructions about suitability for mediation, arbitration or other alternate dispute resolution when they ask for a hearing date. Parties should note that the Court's power to order mediation does not depend on the consent of the parties.
- 10.2 If a case has not been the subject of alternate dispute resolution, the Court may order that the parties arrange and hold a settlement conference before the hearing date. The parties and their legal representatives must attend that settlement conference. In the case of an insured party, an officer with authority to resolve the case must attend.

11. Directions Hearings and Show Cause Hearings

11.1 At any stage, the Court may refer a case to a directions hearing before the Civil List Judge or the Judicial Registrar. If a case is not ready for hearing at the status conference it will be referred for directions. Any order to provide statements or file affidavits must be strictly complied with. Generally, the Court will not accept statements, affidavits or submissions which have not been provided in accordance with an order.

11.2 Cases in which parties have failed to comply with Court orders will be referred to the Civil List Judge at an early time.

11.3 Where there has been non-compliance with Court orders, the Court may list a case for

(a) the plaintiff to show cause why the case should not be dismissed for want of prosecution

(b) the defendant to show cause why the defence should not be struck out and/or any cross claim dismissed for want of prosecution

The party ordered to show cause should expect to pay the costs of the show cause hearing.

11.4 At least 5 days before the show cause hearing, the legal practitioner for the party in default (or the party, if self-represented) must file and serve an affidavit setting out the reasons why he or she has not complied with the Court's orders and/or this practice note. In addition, any other party who wishes the Court to consider any submissions must put those submissions in writing, file and serve them at least 5 days before the show cause hearing.

12. Adjournments

- 12.1 If a hearing date is in jeopardy as a result of non-compliance with orders or intervening events, either party must immediately approach the Court by filing an affidavit in the registry. The registry will allocate a directions hearing before the Civil List Judge. The affidavit and details of the listing date and time must be served on all other parties forthwith. If adjournment of the hearing date is later sought, the Court will take any failure to approach the Court under this clause into account when considering the adjournment application.
- 12.2 The Court will only grant adjournment applications where there are very good reasons. The failure to comply with orders will normally not be a reason for adjournment. Parties who breach orders may be restricted in the evidence which they can rely on at the hearing.
- 12.3 An application for adjournment of a trial or arbitration is made by notice of motion and supporting affidavit and must be made at the earliest possible opportunity.
- 12.4 Where appropriate, the Court will make costs orders in a fixed sum payable at a nominated time. The Court will, almost invariably, make an order for costs against a party whose legal representative has failed to ascertain the availability of the parties and their witnesses before taking a date for trial or arbitration. The Court may call on legal practitioners to show cause why they should not pay the costs of an adjournment personally or reimburse their client for those costs.

13. Settled Matters

- 13.1 Practitioners are requested to advise the list office immediately on 9377 5833 when cases with hearing dates are settled.

- 13.2 Until terms of settlement, consent orders or a notice of discontinuance is filed, the parties must attend when the case is listed before the Court. Parties should aim to file settlement documents in court on that day. If settlement documents are not available when the case is listed for hearing, the case will be listed for directions.
- 13.3 Settlement documents must be filed promptly and, if they have not been filed, parties must attend on the directions date. The Court may dismiss cases for want of prosecution if settlement documents are not filed or if the parties do not appear.

The Hon. Justice R.O. Blanch A.M.
Chief Judge
28 August, 2009