

# Practice Note DC (Civil) No. 1A

## Case Management in Country Sittings

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 heard in country sittings (i.e. excluding Sydney, Gosford and Newcastle) from 6 April 2018 as do the Standard Orders for Hearings In Country Matters annexed to this Practice Note at Schedule 1.

### **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. Parties to proceedings and the legal practitioners representing them will be expected to assist the Court to meet this time standard.
- 1.3 Counsel's advice should be obtained early. Proceedings will not be delayed by reason of a party's failure to brief counsel at an early stage.

### **2. Commencing Proceedings**

- 2.1 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. Practitioners should be mindful of the Standard

Orders for Hearings In Country Matters, annexed at Schedule 1 of this Practice Note.

- 2.2 Parties should give earnest consideration to the appropriateness of the venue where proceedings will be commenced.
- 2.3 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.
- 2.4 In actions under the *Motor Accidents Compensation Act 1999*, *Motor Accident Injuries Act 2017* or Part 2A of the *Civil Liability Act 2002*, if attaining an impairment threshold is necessary to entitle a plaintiff to claim damages of any particular type, proceedings should not be commenced without evidence as to the relevant threshold.
- 2.5 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.
- 2.6 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 or receipt of any further notification of medical examinations under rule 15.14.

- 2.7 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 other form of alternative dispute resolution and 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, have qualified the experts who will prepare reports, including any liability or economic loss expert and notified the defendant of the expert appointments under rule 15.14. 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. Where a party is represented by an agent, that agent should have complete instructions and be able 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 and child care appeals) 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 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. The orders of the Court must be strictly complied with. Failure to

comply with those orders will be treated seriously and may lead to adverse costs orders against the non-compliant party or where appropriate, a legal practitioner.

- 5.4 The Court will give directions for the service of expert reports under rule 31.19 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. For concurrent evidence, the parties must comply with clauses 6-9 of the Standard Orders for Hearings In Country Matters.
- 5.5 In cases under the *Motor Accident Compensation Act 1999*, *Motor Accident Injuries Act 2017* 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.
- 5.6 In an appropriate case, the Court will allocate a trial date at the pre-trial conference or refer the parties to a settlement conference or 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 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 on the first day of the next country sittings. Urgent motions and motions that may affect the hearing of a matter in a forthcoming country sittings should be returnable in Sydney as foreign motions.
- 7.3 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.
- 7.4 Counsel are not required to robe for the hearing of motions and summonses.
- 7.5 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 for alternative dispute resolution in accordance with clause 11 of this Practice Note.
- 8.4 When parties attend a status conference they must have instructions about alternative dispute resolution under Part 4 of the *Civil Procedure Act 2005*, details of the availability of their client, witnesses and counsel together with an estimate of the length of the case to allow directions to be made as to alternative dispute resolution or a hearing 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 The Court will generally order that final particulars under rule 15.12 or 15.13 be filed and served before the status conference.
- 8.8 Parties should be aware that cases may only be placed in the Inactive List by order of a Judge or the Judicial Registrar. Applications for entry into the Inactive List should be made by Notice of Motion supported by affidavit annexing any relevant material relied upon.

8.9 Cases in the Inactive List will be listed for review at the next sittings after the expiration of the period during which they are ordered to remain in the Inactive List.

## **9. Estimates of the Length of Hearings**

9.1 Any estimate given to the Court of the length of a hearing when the matter is allocated a hearing date must be honest and reliable, having been given earnest consideration by the parties. Parties must promptly notify the Court if the estimate given for the hearing changes. Substantial underestimations of the length of a hearing may lead to costs orders against legal practitioners pursuant to ss 98 and 99 of the *Civil Procedure Act 2005*.

9.2 Parties should be aware that matters will not normally be adjourned part-heard to Sydney, and are expected to finish within the country sittings in which they are listed. In this regard, parties will be expected to make early applications for any expert witness not locally resident to give evidence by audio-visual link and any other applications relevant to courtroom logistics and ensuring the smooth operation of proceedings. If the matter is unlikely to finish within the time allocated for the sittings it should be commenced in Sydney. Any request to extend the sittings to accommodate a hearing which is likely to exceed the length of the sittings must in the first instance be made to the List Judge in Sydney who will then consult with the Chief Judge. Such extensions to country sittings will rarely be granted.

## **10. Circuit Lists**

10.1 Parties should be aware that all cases in the sittings will be listed on the first day of the sittings and will be listed in the following order of priority:

(i) Child care appeals;

(ii) Cases that have been not reached at a previous sittings;



(iii) Any cases with priority. Information as to parties or witnesses with age or health problems or from interstate or overseas or cases requiring expedition should be provided at the Status Conference;

(iv) All other cases.

Any other application for priority should be made to the Judge presiding at the sittings.

10.2 The relevant registry will prepare a list of cases at the sittings. The list should be finalised a fortnight before the sittings so that a copy may be sent to the Judicial Liaison Officer for the information of the Chief Judge, the Civil List Judge and the Judge presiding at the sittings.

## **11. Alternative Dispute Resolution**

11.1 The Court will refer all appropriate cases for alternative dispute resolution. The parties must have instructions about suitability for mediation or other alternative 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.

## **12. Directions Hearings and Show Cause Hearings**

12.1 If a case is not ready for hearing at the status conference it will be listed for directions before the presiding Judge at the next sittings. 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.

12.2 Where there has been non-compliance with Court orders, the Court may list the case before the List Judge in Sydney for:

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

(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.

12.4 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.

### **13. Adjournments**

13.1 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 List Judge in Sydney. 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.

13.2 The Court will only grant adjournment applications where there are very good reasons. The following will normally not be sufficient reasons for adjournment:

(a) the unavailability of counsel or;

(b) the failure to comply with the Standard Orders for Hearings or any other orders or directions made by the Court or;

(c) the failure to properly prepare the matter for hearing.

13.3 Parties who breach the Standard Orders for Hearings or any other Court orders may be restricted in the evidence which they can rely on at the hearing.

13.4 An application for adjournment of a trial is made by notice of motion and supporting affidavit and must be made at the earliest possible opportunity and will be heard in Sydney.

13.5 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. 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.

#### **14. Conduct of Hearings**

14.1 The Court considers that rule 58 of the *Legal Profession Uniform Conduct (Barristers) Rules 2015* applies to all legal practitioners who appear before it. Accordingly, in conducting a hearing, legal practitioners must:

(a) confine the case to identified issues which are genuinely in dispute;

(b) present the identified issues in dispute clearly and succinctly;

(c) limit evidence, including cross-examination, to that which is reasonably necessary to advance and protect the client's interests which are at stake in the case; and

(d) occupy as short a time in court as is reasonably necessary to advance and protect the client's interests which are at stake in the case.

## **15. Settled Matters**

15.1 Practitioners are requested to advise the relevant registry immediately when cases with hearing dates are settled.

15.2 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.

15.3 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.

**STANDARD ORDERS FOR HEARINGS IN COUNTRY MATTERS**

**CHRONOLOGY**

1. The Plaintiff's solicitor is to prepare a full chronology of relevant events, a copy of which is to be served upon the other party/parties at least 3 clear days prior to the hearing date.
2. The plaintiff is to read (or have read to them) the chronology before giving evidence. The chronology should be tendered in the plaintiff's case.

**MEDICAL AND EXPERT REPORTS**

3. Each party is to prepare a schedule of medical and expert reports and any other documents which are to be tendered. A copy of the schedule is to be served upon the other party/parties at least 3 days prior to the hearing date.
4. The schedule is to contain the dates of the reports and the dates of service.
5. Working copies of all medical reports, the chronology and all other documents which any party proposes to tender should be available for the Trial Judge.

**CONCURRENT EVIDENCE**

6. Where more than one expert has been required to give oral evidence, if the experts' field of expertise is the same or substantially the same, arrangements should be made by the parties for the experts to give their evidence concurrently.
7. If the parties disagree or are in doubt as to whether the case is suitable for concurrent expert evidence, directions should be sought from the Court on that matter at the earliest convenient time after such disagreement or doubt arises. If the relevant circuit court is not sitting, the application should be made to the list judge in Sydney. This order includes an application by any party for a hearing to be exempt from the requirement for concurrent evidence.
8. Where experts are to give their evidence concurrently each expert should be provided with the reports of the other expert/s, if not already in their possession, at least 21 days before the commencement of the hearing.
9. The experts, before giving their oral evidence, should confer with the intent of reducing the issues between them. Thereafter a joint report should be prepared stating areas of agreement and continued disagreement. Where

areas of continued disagreement remain, reasons must be stated by each expert (or group of experts holding a common opinion) for such continued disagreement.

## **SCHEDULES OF DAMAGES AND ISSUES**

10. Each party is to prepare a schedule of damages and a schedule of issues which is to be served upon the other party/parties at least 3 days prior to the hearing date. Copies of the schedules are to be provided to the Trial Judge.

## **COURT TECHNOLOGY AND EVIDENCE**

11. If a party intends to adduce electronic evidence, for example CCTV footage, via CDs, DVDs or data files the party must consult the “Information Sheet – Presentation of Electronic Evidence” located on the District Court website at: <http://www.districtcourt.justice.nsw.gov.au> 28 days prior to the hearing to confirm that the Court’s technology resources capable of playing the evidence. Arrangements for testing any equipment may be the Court Registry or contacting [multimedia@justice.nsw.gov.au](mailto:multimedia@justice.nsw.gov.au).

If the electronic evidence is not in a form that is compatible with the Court’s technology resources the evidence must either be converted to formats used by the Court or the party must bring their own devices to play the evidence.

## **ADJOURNMENTS**

12. All cases should be ready to proceed during the sittings in which they are listed. All sittings will operate as a running list and applications for special fixtures within the running list will not normally be granted. Parties should be aware that matters will not normally be adjourned part-heard to Sydney, and are expected to finish within the country sittings in which they are listed. Please see clause 9.2 of Practice Note DC (Civil) No.1A. Further, the parties must comply with clause 9.1 of Practice Note DC (Civil) No.1A when providing estimates of the length of hearing. Parties should promptly notify the Court if the estimate given changes.

13. Subject to sections 56-60 of the CPA, hearings will only be vacated or adjourned where there are very good reasons. These must be demonstrated by the party seeking the vacation or adjournment. The unavailability of counsel or a failure to comply with court orders or to properly prepare the matter for hearing, will normally not be sufficient reasons.

14. Any application for an adjournment must be made by way of Notice of Motion with an affidavit in support and must be made at the earliest possible time. If the relevant circuit court is not then sitting, the application should be made to the list judge in Sydney.

## **COUNSEL**

15. Counsel appearing at the hearing are to be notified of these orders.

16. The presiding Judge will call through all matters at commencement of circuit and all parties should be represented.

The Hon. Justice D.M. Price A.M.

Chief Judge

29 March 2018