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 18 September 2023. This Practice Note amends the previous Practice Note DC (Civil) No. 1 which commenced on 30 August 2020.

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 the District Court, annexed at Schedule 1 of this Practice Note.

2.2 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.

2.3 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.

2.4 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.

2.5 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.

2.6 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 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. 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 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 No case may be entered into the Commercial, Intentional Torts 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 the Commercial, Intentional Torts or Professional Negligence lists. Any application must be supported by an affidavit setting out the reasons for entering a case in that list. The Court will carefully consider each application, even if both parties consent.

5.5 Cases will generally not be put into the Commercial, Intentional Torts or Professional Negligence 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 $300,000 and cases which do not require special case management will not usually be placed into the Commercial, Intentional Torts or Professional Negligence 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 adverse costs orders against the non-compliant party or where appropriate, a legal practitioner.

5.7 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.

5.8 In cases under the *Motor Accidents 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.

5.9 In an appropriate case, the Court will allocate a trial 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 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 For proceedings that are eligible for the Online Court, parties will be required to commence an Online Court Request by 2pm and complete it by 6pm the Tuesday before the listing, addressing the following:

(a) requesting any case management orders for the motion and where appropriate an adjournment of the motion listing.

(b) indicating if the motion is ready to be heard on the Friday listing and if so, provide an accurate estimate of the hearing time required. If the parties are not available for the Friday listing they are to indicate a mutually available Friday for the hearing of the motion.

(c) if a special fixture hearing of the motion is required (a special fixture hearing is generally required if the estimate of hearing time required for the motion is more than 1 hour), parties must provide a range of mutually available dates for the special fixture.

For proceedings that are not eligible for the Online Court, the parties will be required to attend the motion listing to address the matters in (a) to (c) above.

7.4 Unless otherwise ordered, any outline of written submissions to be relied on at the hearing of a motion must be filed and served no later than 11.00am on the day prior to the hearing of the motion.

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 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.

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 must expect that cases that do not finish within the estimate provided to the Court will continue until concluded.

10. Long Trial Dates

10.1 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.

10.2 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.

10.3 Cases with an estimated trial time of 5 days 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.

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.

11.2 Where a case is estimated to take three or more days, the Court will generally make a direction requiring the parties to participate in a mediation unless the parties have made arrangements to do so.

11.3 In cases estimated to take less than three days, the Court will generally 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.

12. Directions Hearings and Show Cause Hearings

12.1 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.

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

12.3 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 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 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.

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 or mediation is made by notice of motion and supporting affidavit and must be made at the earliest possible opportunity.

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 or mediation. 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 The following applies to all proceedings which have been allocated a hearing date other than those to which Practice Note DC (Civil) No. 7 Court Approval of Settlements apply.

15.2 When such matters resolve, practitioners must immediately advise the list office at sydneycivilregistry@justice.nsw.gov.au.

15.3 Until terms of settlement, consent orders or a notice of discontinuance (the Settlement Document) is filed, the parties must attend when the case is listed before the Court. Parties must file the Settlement Document no later than the first day set for hearing (the Hearing Date).

15.4 On the Hearing Date, matters that are settled pending the filing of the Settlement Document will be adjourned for fourteen days.

15.5 On the Hearing Date, unless the Court otherwise orders, the following orders will be made when a matter is settled but the Settlement Document has not been filed:

(a) note the undertakings of the legal representatives of the parties that the matter has settled;

(b) stand the matter over for mention to the Settled Matters List (14 days from the Hearing Date);

(c) if the Settlement Document is filed prior to the Settled Matters List mention date, that listing will be vacated;

(d) should the parties not file the Settlement Document or fail to appear at the Settled Matters List mention date, the proceedings will be dismissed.

Schedule 1 – Standard Orders For Hearings

STANDARD ORDERS FOR HEARINGS

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 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 parties at least 3 clear 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' fields of expertise are 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. 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 experts, 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 parties at least 3 clear 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 28 days prior to the hearing to confirm that the Court's technology resources are capable of playing the evidence. Arrangements for testing any equipment may be made on enquiry with the Court Registry or contacting 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.

COURT BOOKS AND EVIDENCE

12. If any party intends to prepare a Court Book for tender at the hearing, the contents of the Book must be limited to such documents which are specifically relevant to that party's case and no more. Duplication of any documents is to be avoided as far as possible.

ADJOURNMENTS

13. All cases should be ready to proceed on the hearing date. Parties must expect that cases that do not finish within the estimate provided to the Court will continue until concluded. The parties must comply with clause 9 of Practice Note DC (Civil) No.1 when providing estimates of the length of hearing. Parties should promptly notify the Court if the estimate given changes.

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

15. 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.

COUNSEL

16. Counsel Appearing at the hearing are to be notified of these orders.

The Hon. Justice D Price AO

Chief Judge

11 September 2023