

Introducing Pre-Trial Case Management for Civil Litigation, Supreme Court of Queensland, Brisbane

Background

The Court wants to use its resources efficiently, and ensure the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense. Issues have been identified which undermine this goal. These relate to the management of cases between the signing of a Request for Trial Date (RFTD) and trial.

Currently, once matters are given trial dates they generally are not subject to any Court supervision until they are allocated to a trial judge, often very shortly before the trial. The lack of supervision over this period means that poorly prepared cases may not be identified by the Court until just before trial. Also, the real issues to be tried are not identified and narrowed until the start of the trial.

The Caseflow Management System deals with some matters, but once the RFTD is filed the matter is no longer subject to the Caseflow process. Unfortunately, many cases thereafter are not progressed to resolution as well as they should be.

The Supervised Case List deals with certain matters which are placed on that List. However, many cases are not subject to any case management.

This may add to costs and delay. It may also disrupt the trial process, for example where critical documents have not been identified; the pleadings do not properly reflect the real issues in dispute; conflicting expert opinion is contemplated but no steps have been taken to narrow the issues between the experts; or the parties have incorrectly predicted the likely length of the trial.

Parties may not have adequately considered the logistics of actually running the trial, for example by the management of documents; the resolution of objections to evidence and the preparation of a realistic trial plan.

On occasions, the trial must be adjourned so that problems like these can be resolved.

Inefficient preparation for trial comes at a great cost to the public and the parties. Trials cost more to prepare, and run longer than they should. Finite judicial and court resources are not used to best effect.

Desired Goals

To address these issues the Court is trialling over the next 12 months a system of pre-trial case management. The new process is designed to ensure that every matter is subject to court supervision from filing of the RFTD until it is assigned to a judge, several weeks prior to trial.

The system will have a threefold benefit:

- It will avoid or reduce the waste of valuable court resources and costs to litigants caused by the inappropriate allocation of trial dates and/or by the forced adjournment of trials;
- Information gathered during the pre-trial process will assist the senior judge in the allocation of matters to trial judges; and
- Trials will be prepared and run more efficiently, saving the Court and the parties time and costs.

Cases requiring supervision by a judge, or which are expected to take more than 5 days to try, will continue to be placed on the Supervised Case List. Commercial List judges will continue to manage cases on their lists. Cases involving self-represented litigants will be supervised by a judge.

The following process will apply to cases which are not on one of those lists.

The Process

The Court has appointed a Resolution Registrar. The registrar will be responsible for managing the pre-trial case management system. Essentially, that system will require the parties to participate in two case management conferences. The process will be triggered by the filing of a RFTD.

The parties will receive a Conference Notice by email, requiring them to attend (in person, or by their legal advisor if they are represented) at the First Case Management Conference. In preparation for that conference the parties will be required to prepare documents necessary to the proper preparation of the case for trial, as envisaged by Practice Direction No.9 of 2010. Those documents will comprise: a List of Issues; a Statement of Matters not in Dispute; a Trial Plan and an Index to an Agreed Bundle of Documents (the documents). The required form and content of the documents will be fully explained in the Conference Notice.

At the conference the registrar will review the matter, identify any inadequacy in the documents and allocate dates for the trial of the matter. If at that stage matters require judicial supervision, the registrar will refer the matter to a Supervised Case List judge or another judge.

At or about six weeks prior to trial the parties will be required to attend a Second Case Management Conference. Again, the parties will receive a Conference Notice by email. In preparation for the second conference the parties will confer and agree on any necessary revision of the documents to ensure that they are up-to-date and accurately record the parties' plan for the conduct of the trial. The parties will re-visit and confirm their estimate as to the likely duration of the trial.

At the conclusion of the pre-trial case management process the case will be allocated to a judge, who will then assume responsibility for supervision of the matter.

In addition to assisting the parties to efficiently prepare a matter for trial, and shorten the length of trials, at either conference the registrar may suggest resolution or narrowing of issues or the whole case. The parties may agree to engage in “without prejudice” communications however the registrar will not be conducting mediations.

The registrar will assist the judges and the parties to civil litigation in other ways. Supervised Case List and other judges may refer matters to the registrar to conduct a case conference. If the parties disagree about whether a RFTD should be signed they may seek the assistance of the registrar, who may conduct a case conference or refer the matter for resolution by a judge.

The Way Forward

The Court and the Registry greatly appreciate the assistance of the Queensland Law Society and the Bar Association of Queensland in disseminating information about the new system. The co-operation and support of the legal profession are essential to ensuring the success of the new process. The process is intended to reduce delays, the length of trials and costs.

Feedback will be sought from the profession over time, with a view to refining and enhancing case management so that the real issues in civil proceedings are resolved at a minimum of expense.