

Practice Directions - No. 22 of 1991

Case management for civil proceedings (other than commercial causes)

1. The court is concerned that civil proceedings susceptible of settlement frequently settle too late, at a stage when costs have been unnecessarily incurred, and is anxious to ensure that in such cases, the parties explore the prospects of settlement at an appropriately early stage. Where settlement results, the litigants will have secured an advantage, and the court lists will have been relieved, facilitating the trial of cases which cannot reasonably be settled.

2. The court wishes to implement a system of case management applicable to all civil proceedings other than commercial causes, which are currently managed, but presently lacks the resources necessary for that purpose. It is however able to implement limited case management with respect to a further part of the civil litigation within the court, comprising damages claims arising from motor vehicle negligence and master-servant relationships.

3. Accordingly, parties to proceedings:

- (a) for damages for personal injuries arising from motor vehicle negligence, or
- (b) for damages for personal injuries arising from master-servant relationships, including in each case dependency claims,

instituted after the date of this Practice Direction in the Supreme Court at Brisbane, will be subject to the following provisions. (Para 14 applies to cases presently on the civil call-over list.)

4. An important object of this system is to ensure that legal costs are not unnecessarily incurred. The court will therefore do its best to ensure that compliance with those provisions does not increase, but reduces, costs.

5. These assumptions underlie this system of case management:

- (a) when such claims are instituted, the plaintiff's claim should usually have been substantially prepared, and the Workers' Compensation Board will frequently have carried out its own investigations; although a licensed insurer will often not have had the opportunity to do that;
- (b) while the exchange of pleadings may be beneficial, the scope of discovery and interrogatories should usually be very limited because of the content of the statements served pursuant to O 39 rr 29C and 29D;
- (c) if the case is susceptible of settlement, then with diligent application by the parties, it should ordinarily be achieved within 8 months of the issue of the writ, that period allowing, among other things, for sufficient investigation by a licensed insurer, as referred to in (a);
- (d) the statements served under O 39 rr 29C and 29D will comply with the requirements of those Rules; (neglect in compliance with those Rules has sometimes occurred in the past, impeding settlement of actions, and the court will be astute to do its best to ensure compliance with those Rules in the future).

6. Within 90 days of service of the defendant's statement under O 39 r 29D, a conference will take place in accordance with the following provisions:

(a) those attending will, unless impracticable, include the plaintiff, and a representative of the licensed insurer or the Workers' Compensation Board as the case may be, familiar with the proceedings and with authority to settle;

(b) the conference will take place at a time and place to be agreed, and failing agreement, at 10 am on the day 90 days after service of the defendant's statement under O 39 r 29D at the office of the plaintiff's solicitors (that period allowing for proper preparation in advance, following the service of statements under O 39);

(c) the conference will be conducted on a "without prejudice" basis;

(d) at the conference, the parties will comprehensively and genuinely explore the prospect of settling the case; to that end, they will properly prepare for the conference.

7. Not later than 21 days after that conference, unless the case has previously settled, the solicitor for each party will deliver to his client:

(a) a written estimate of costs incurred to date by that party, specifying the amount not likely to be recovered on a party-and-party taxation in the event of success in the proceedings;

(b) a written estimate of further costs likely to be incurred should the case proceed to trial, again specifying the amount not likely to be recovered on a party-and-party taxation; and

(c) written advice as to the possibility of securing early settlement through mediation, and an outline of the facilities for mediation then available —

in a form comprehensible to a person without prior legal experience.

8. From the date of this Practice Direction the registrar will keep a list of all proceedings falling within para 3, including the name of the solicitors for the plaintiff.

9. In the event of the settlement of such proceedings, the plaintiff will promptly notify the registrar of such settlement, and the registrar will note the list to that effect.

10. In respect of all such proceedings not notified as settled within 4 calendar months of service of the defendant's statement under O 39 r 29D, the parties will attend before a judge or master on a date to be advised by the court, as soon as possible thereafter, for the review of the action, with a view to ensuring:

(a) that the prospect of settlement has been sufficiently investigated;

(b) if the action has to proceed to trial, that it occur as expeditiously as possible and at a minimum of expense; and

(c) that any further prospect of settlement, whether by mediation or otherwise, is properly explored —

and the court may make appropriate orders and directions with a view to achieving those objectives.

11.

(a) At that review hearing, the same parties as attended the conference referred to in para 6(a) should attend, unless impracticable.

(b) Those parties will be obliged to satisfy the judge or master that they participated in a conference fulfilling the requirements of para 6. If such a conference has not been held, and for no sufficient reason, the judge or master may mark the action as one which is to be accorded deferred priority in the ultimate listing of civil proceedings for trial.

(c) Before that review hearing each plaintiff, any counter-claiming defendant, and defendant will have made an offer to settle under O 26; and in default, be in a position to explain at the review hearing why such offer has not been made.

12.

(a) If the plaintiff's disabilities have not stabilised by the commencement of the proceedings, and the parties agree that it would therefore be preferable to defer the conference otherwise required under para 6, they may agree in writing to defer the conference but not beyond 12 months from service of the defendant's statement under O 39 r 29D.

(b) In that case, the plaintiff will notify the registrar of such deferment and furnish a copy of the agreement for deferment.

(c) Paras 10 and 11 will apply to such cases if not notified as settled within 18 months of the issue of the writ.

13. As from the date of this Practice Direction the form of certificate of readiness applicable to O 39 r 30A in respect of proceedings covered by the Practice Direction will be the form contained in the annexure.

14. This paragraph applies to all proceedings of the nature of those referred to in para 3 listed on the civil call-over list down to number 150 as at 1st February, 1992.

(a) The parties will hold a conference otherwise complying with para 6 on or before 1st March, 1992.

(b) Para 7 will apply.

(c) The plaintiff will promptly notify any settlement to the registrar.

(d) Trial dates will not be allotted unless:

(i) the conference has been held, and

(ii) each plaintiff, any counter-claiming defendant, and defendant has made an offer to settle under O 26, or is able to offer a satisfactory explanation for not having done so.

15. The court will establish a committee of representatives of parties frequently involved in such proceedings to monitor the implementation of this system of case management and to advise the court in relation to it.

ANNEXURE

(Heading of action)

CERTIFICATE OF READINESS FOR TRIAL

This certification is made by each of:

(a) *Name*
Firm
Address
Telephone No
Fax No
(Solicitor for the plaintiff)

(b) *Name*
Firm
Address
Telephone No
Fax No
(Solicitor for the defendant)

being in each case the solicitor having the active conduct of the matter.

(Notes:

- 1 The above information is to be included in respect of the solicitor for **each** party.
- 2 Where views differ on the information referred to below, those differing views should be separately identified.)

I and I certify to the court as follows:

1. The principal relief claimed in the matter is
(note: a general description, such as “damages for personal injuries motor vehicle”, or “damages for personal injuries master servant”, or “damages for loss of dependency”, will suffice.)

2. The matter is not within the jurisdiction of a District Court or a Magistrates Court.

3. (a) The pleadings have closed. I am not aware that any party contemplates any further step with respect to pleadings, whether by way of amendment, striking out or otherwise.

(b) Discovery of documents has been completed. Any interrogatories delivered have been answered.

(c) To the best of my knowledge and belief, no party contemplates taking any further interlocutory step.

(d) The action is in all respects ready for trial.

(e) A conference of the kind mentioned in O 39 r 30A(4)(e) was held on at .

4. There has been full compliance with the requirements of Div 3A of O 39. I acknowledge the constraints on the calling of evidence provided for by O 39 rr 29C(4) and 29D(4).

5. *(Complete as appropriate)*

- Mediation was undertaken on
- Further mediation is desirable, and we intend that it take place on . (Should it prove successful, I will advise the court forthwith.)
- Mediation has not been undertaken because

6. *(Complete as appropriate)*

- Apart from mediation as such, settlement negotiations have occurred.
- Settlement negotiations are continuing.
- Further settlement negotiation is not contemplated because

7. *(Complete as appropriate)*

I consider that:

- there are reasonable prospects that the matter will settle;
- there is some prospect of settlement;
- there is no prospect of settlement because

8. *(Complete as appropriate)*

- An O 26 offer was made by the on
- No O 26 offer has been made by the because

9. I request the allocation of trial dates not earlier than

I certify that all witnesses for my client will by then be available, and that I have enquired specifically of each before so certifying.

10. Counsel for my client is . I certify that I have discussed with him the likely length of the trial. He estimates that the trial will last . *(Modify as appropriate for cases in which the party will not be represented by Counsel at the trial or if Counsel has not been retained as at the date of the certificate.)*

11. There will be witnesses at the trial called on behalf of my client *(that number to include the client if he is to give evidence himself).*

12. If, following the allocation of trial dates, I become aware of any circumstances relevant to the question whether or not the trial can proceed at that time, I will notify the master immediately.

13. I acknowledge that following my signing of this certificate, my client is not entitled to take any interlocutory step or make any interlocutory application except with the court's leave.

Signed:

Solicitor for the plaintiff; date

Solicitor for the defendant; date

(Solicitors for other parties; dates)

B H McPHERSON
Acting Chief Justice

15 October 1991