

# New listing procedures being prepared to improve system

Civil listing procedures will be reformed by amending the *Supreme Court Rules* and by the issue of a practice direction.

The reforms have been designed to speed up litigation, thereby reducing costs, and feature a "reserve" list, which effectively allows cases which are ready to proceed without interstate witnesses to be slotted into the list in the event that a matter settles at the last minute.

Justice Mildren was charged with drafting the new policy, the bulk of which appears here.

The present system will be divided into two stages.

Stage 1 is the time from the issue of proceedings until the final Status Assessment Meeting (SAM) with the Registrar, Master or Judge.

Stage 2 is the time from the end of stage 1 until the commencement of the trial.

Broadly, the aims of this system are:

- (1) To shorten the period between the issue of proceedings and trial date;
- (2) to enhance the prospects of settlement at an early stage;
- (3) to focus on the true issues and eliminate as much as possible irrelevant issues or issues that have little or no prospect of success;
- (4) to reduce the cost of litigation;
- (5) to increase the number of matters resolved per annum; and
- (6) to avoid wasting court time and judicial resources.

## STAGE 1

This will involve the following techniques:

- (a) The introduction of case-flow management at an earlier stage of each case, eg within two months of filing the originating process (cf r

48.19). The initial SAM would be held by a Registrar or Master.

(b) The introduction of court-based mediation wherever appropriate. This would involve some alterations to r 48.31.

(c) When a party considers a matter is ready for trial, there would still be a SAM with a view to entering the matter into a trial list or giving it a hearing date.

(d) Change categories in r 48.23 and introduce new ones:

A - 1 to 3 days

B - 4 to 5 days

C - 6 to 10 days

D - 11 to 28 days

E - in excess of 28 days

F - urgent cases requiring fast tracking regardless of the duration of the trial

G - short notice list (all matters, irrespective of hearing time, which did not require any or at least any significant interstate witnesses and which could be brought on for hearing on relatively short notice would be placed in this list).

(e) The adoption of (d) would mean changing r 48.26 to list all matters other than categories A, B, C and G before a Judge.

(f) Consequential changes to r 48.27.

(g) Change r 48.11 to provide instead that when a Category A, B, C or G matter is ready for trial, the matter be entered on a trial list.

## STAGE 2

(a) There will be a trial list of all Category A, B, C and G matters ready for trial. The list will be called over in open chambers before a judge about every two months at which time matters will be listed for trial.

(b) Trial dates will be given to

matters in the trial list in the order by which they enter the list.

(c) The callover will be for civil sittings of four to eight weeks commencing two months hence. If more than one judge is available, both judges' lists will be filled.

(d) Notwithstanding that a matter is in the trial list, each party shall provide, not later than the time of the callover, a certificate by each counsel briefed for each matter likely to be given a trial date stating that the matter is ready for trial, the anticipated length of the trial, and any dates on which that counsel is not available as well as other matters, unless counsel attends personally.

(e) Category D, E and F matters will go into a separate list. Dates will be allocated to those matters by the judge in charge of the final SAM. These cases will not usually be involved in any callover. A certificate of readiness by counsel will be required at the final SAM before trial dates are fixed by the judge in charge unless counsel attends personally.

## GENERAL

(1) It is proposed that Category A cases be back-ups to Category B and C cases. If the head trial doesn't settle, Category A cases will be heard by the duty judge or any other available judge.

(2) Two judges will sit simultaneously to allow flexibility in the event of an overrun.

(3) Video conferencing will be considered in each case. The Supreme Court is considering the purchase of video conference equipment, though no decision has been reached.

(4) The system will apply to Alice Springs and SAMs will take place, in the absence of a registrar or judge, by

## Civil procedures (continued)

teleconference or video conference.

Category A matters will not go before a duty judge for trial in Alice. However, they will be able to be used as back-ups for Category B and C matters.

Callover of the Alice Springs list could take place by a judge in Alice Springs or before a judge in Darwin using video conferencing.

(5) Provision will be made for self-executing orders in default by a party in complying with an order of the court even if the fault is that of a party's solicitor. The Rules will further be amended to provide for an action which is struck out to be reinstated if, in the interests of justice, it is appropriate to do so. Where a matter is ordered to be reinstated, the defaulting party will be required to give security for, or to pay costs thrown away, within a time fixed by the judge. The court may also order the defaulting party to give security for the future costs of the action. The order for reinstatement may be

conditional upon the giving of security of payment of the costs within the time limited.

(6) It is proposed that all matters in the civil list to be heard by a single judge including Justices' Appeals, Work Health Appeals, Motor Accidents (Compensation) Tribunal hearings, applications and appeals under other special Acts, and matters commenced by Origination Motion be treated in the same manner as matters commenced by Writ.

It may be appropriate to also include applications to a single judge for leave to appeal to the Court of Criminal Appeal in the same system, ie so that all matters, except criminal trials, which are to be heard by a single judge are dealt with in the same manner.

It is not proposed to include in the review any change to the present system for listing criminal trials, although criminal trials may be dealt with in a separate review at some stage in the future.

## DPP & Meyers v Four Corners

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Justice Eames said he thought it was not too much to ask that the ABC contact the offices of DPPs around the country to determine whether any trials with similar facts would be running on the scheduled date of broadcast.

"...having seen the programme...it seemed to me to have a potential to create unfairness which would seriously trouble me were I the trial judge [in *R v Meyers*]...or were I counsel acting for an accused person in such circumstances.

"It would deeply trouble me if I were the accused person."

Meyers was found guilty of murder on 30 April and received a head sentence of 14 years with a non parole period of 10 years.

The matter is now the subject of an appeal.

Four Corners could have put *Excuse for Murder* to air on 3 May but a programming decision resulted in its national broadcast on 10 May.

## New guide

A Northern Territory guide for small business and the law will soon be available.

The guide, a joint project of the Department of Industries and Development and the Law Society, has been modelled on similar guides available in other states.

It has been written by the Society's Commercial Law Sub-committee and covers, among others, these topics:

- \* incorporation
- \* use of a trust
- \* contracts
- \* leases
- \* franchising
- \* trade practices
- \* sale of goods
- \* debt recovery
- \* insolvency and bankruptcy
- \* guarantees
- \* insurance and
- \* employment.

# Membership renewal is now due

*How will you cope without your issue of Balance?*