



Case Management *in extremis*

TECHNOLOGY – THE FUTURE OF CASE MANAGEMENT

Prologue

logue



Allsop CJ – Fundamentals

- ▶ ‘The court’s task is to understand how litigation should run, and how it can be encouraged to run cost-efficiently. I suggest a new dialogue based on these fundamentals. How case management works or not, as the case may be, should be part of that dialogue.’
- ▶ The Fundamentals
 1. The profession is primarily responsible for the skilful conduct of cases.
 2. If there is a choice to undertake a cheaper more efficient way to operate, the lawyer’s fiduciary duty is engaged.
 3. Courts should organise their structures to facilitate efficient and skilled lawyers, and to impede or prevent process-based costs that are unnecessary.
 4. Disputes in society are inevitable. It is a social and constitutional imperative to make reasonably available the process of court adjudication.

Warren CJ – Contract

- ▶ The Contract

Judges must be prepared, courteous to counsel, commit to trial dates and deliver judgment in timely manner

Counsel and lawyers must be prepared, commit to trial dates and work together with the Court and practitioners to ‘facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute’

- ▶ The Docket System

A critical aspect of the docket system is the listing practice guarantees trial date and time for judgment writing to facilitate prompt delivery of judgment

Effects of Non-Compliance

- ▶ Disrupts the Court. Docket listing practice vulnerable to late vacation of trial dates due to replacement difficulties.
- ▶ Unfair to other parties:
 - ▶ Lost trial dates
 - ▶ Abridged compliance times to save trial date
 - ▶ Inability to plan
 - ▶ Engage counsel and experts
 - ▶ Arrange witnesses
- ▶ Unfair to litigants in other cases due to delays in listings
- ▶ Costs disputes to resolve critical cause of costs being thrown away

Monitoring Problems

- ▶ Periodic directions
- ▶ Difficult for judge between direction hearings
- ▶ Tension between monitoring and minimising costs
- ▶ Domino effect of non-compliance

Electronic Filing

The Court has, in electronic form, critical information for enabling electronic monitoring and reporting:

- ▶ Plaintiff ABC Pty Ltd
- ▶ Solicitors 123 (A firm) + email address
- ▶ First Defendant DEF Pty Ltd
- ▶ Solicitors 456 (A firm) + email address
- ▶ Second Defendant XYZ Pty Ltd
- ▶ Solicitors 789 (A firm) + email address
- ▶ Managing Judge Bloggs J
- ▶ Originating Process Writ filed 01/01/2019
- ▶ Next Directions Date 31/03/2018
- ▶ Application date/Duration 15/03/2018/ 1 day
- ▶ TRIAL DATE/Days duration 01/09/2018/ 8 days

Directions Embedded in Redcrest

No.	Person affected	Content	Due Date	Compliance
1	P	File and serve an amended statement of claim in the form signed	4pm 24/02/2018	22/2/2018
2	D1	File and Serve a defence	4pm 11/03/2018	11/03/2018
3	D2	File and Serve a defence	4pm 11/03/2018	
4	P	File and Serve a reply	4pm 25/03/2018	
5	D1	Leave to file and serve a third party notice against TUV Ltd	4pm 18/03/2018	X
6	D2	Leave to join GHI Pty Ltd as a defendant for apportionment purposes	4pm 18/03/2018	X
7		Costs reserved		
8		Adjourned for further directions to 30/03/2018		

Data Input

- ▶ Draft orders may be prepared electronically in Redcrest by the parties.
- ▶ After the hearing, the order can be checked and authenticated.
- ▶ On filing a document, the party will be asked to insert the date and the paragraph number of the order, pursuant to which the document is being filed; or the fact that it is not pursuant to an order.
- ▶ On filing of a document, Redcrest will insert the time and date of the filing of the document in the 'Compliance' cell .

Monitoring

- ▶ If the 'Compliance' cell is not completed by the 'Due Date', the response can be customised by the managing judge.
In this example, an email is sent to the defaulting party, copied to the other parties:

Email to D2 cc P, D1 & Judge' chambers

Re: ABC Pty Ltd v DEF Pty Ltd and XYZ Pty Ltd

It is noted that your client has failed to file and serve a defence as ordered in paragraph 3 of the order of Bloggs J made 17 February 2018.

If your client fails to remedy the default by 4pm on 19 February 2018, the matter will be listed for a video-conference before Bloggs J at 5 pm on 20 February 2018.

- ▶ If the 'Compliance' cell is not completed within (say) 48 hours of the 'Due Date', the matter will be listed and the parties notified.

Reports

- ▶ Summary of all orders and compliance.
- ▶ Summary of all orders currently in default across:
 - ▶ matters managed by a particular judge;
 - ▶ the whole of a Court or Division;
 - ▶ a particular firm of solicitors; and
 - ▶ matters involving a particular party.
- ▶ Summary of all documents required to be filed by (e.g.) a particular firm in a particular month.
- ▶ All upcoming hearings/trials by firm.

Video-conferences

- ▶ From late 2018, VSC starts pilot program of hearings by video
- ▶ Mentions/Directions hearings
 - ▶ Mentions = low cost short scheduling conferences at (say) 5.10pm
 - ▶ Directions = formal identification of issues in court
- ▶ High quality video-conference facilities required