



Land and Environment Court

of New South Wales

CASE MANAGEMENT POLICY

Commencement

1. This policy commences on 28 May 2010.

Purpose

2. The purpose of the policy is to promote the case management of proceedings and in particular provide guidance on the use and conduct of case management conferences.

Application

3. The policy applies to all civil proceedings in Classes 1 - 4 and 8 of the Court's jurisdiction.

What is case management?

4. Case management involves the ongoing management by the Court of the conduct of proceedings from the time of commencement to finalisation of the proceedings.

Objects of case management

5. Proceedings in the Court are to be managed to achieve four objects:
 - (a) the just determination of the proceedings;
 - (b) the efficient disposal of the business of the Court;
 - (c) the efficient use of available judicial and administrative resources;

- (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties (see s 57(1) of the *Civil Procedure Act 2005* (“the CPA”).

Case management of all proceedings

- 6. The Court is under a duty to give effect to the overriding purpose of facilitating the just, quick and cheap resolution of the real issues in proceedings in the Court (s 56(1) and (2) of the CPA). Case management of proceedings is intended to further this overriding purpose. All proceedings in the Court, therefore, are to be managed to further the overriding purpose and achieve the objects of case management.

When is case management conducted?

- 7. Case management of proceedings is to occur whenever the proceedings are before a Judge, Commissioner or Registrar. In practice, however, the key occasions on which case management will occur are:
 - (a) at directions hearings before the Registrar in proceedings in Classes 1 and 2;
 - (b) at directions hearings before a Commissioner for Mining in proceedings in Class 8;
 - (c) in the conduct of the List and at directions hearings by the List Judge in proceedings in Classes 3 and 4.
- 8. In some circumstances, it may be appropriate for proceedings to be specially fixed for a case management conference to be conducted by a Judge, Commissioner or Registrar at which the proceedings will be examined in detail for the purpose of making appropriate orders and directions for the management of the proceedings.

Circumstances in which a case management conference is appropriate

- 9. Circumstances in which a case management conference may be appropriate include:
 - (a) proceedings that involve multiple parties or multiple issues;
 - (b) proceedings where one or both of the parties are not legally represented;
 - (c) proceedings that are fixed for a hearing that is expected to be conducted over three or more days; or

- (d) when the parties so request.

When should a case management conference be organised?

10. The Court may at any time arrange a case management conference on its own motion or on application of a party. In most cases, a case management conference will be arranged at the first directions hearing or at the directions hearing at which a hearing date is allocated.
11. For proceedings in Classes 1 and 2, the case management conference usually should be held within 14 days of the date on which the conference is arranged. For proceedings in Classes 3 and 4, the case management conference may be the pre-trial directions hearing to be held on the second last Friday before the commencement of the hearing of the proceedings. For proceedings in Class 8, the timing of the case management conference will depend on the nature of the proceedings.

Multiple case management conferences and adjournments discouraged

12. Multiple case management conferences and adjournments of case management conferences generally should not be permitted unless such action would give effect to the overriding purpose of facilitating the just, quick and cheap resolution of the real issues in the proceedings and the objects of case management.

Goals of case management conferences

13. At the case management conference, the presiding Judge, Commissioner or Registrar will work with the parties to:
 - (a) *Define the issues:*

Ensure that all issues in the proceedings have been clearly defined, including:

 - ensuring that all issues have been properly particularised;
 - ensuring that the parties understand the issues that remain in dispute;
 - identifying any issues that may not be relevant to the determination of the proceedings; and
 - exploring the opportunity for alternative solutions to the issues in dispute, for example, the imposition of conditions rather than the need for expert evidence;

(b) *Direct the appropriate use of evidence:*

Make directions on the use of evidence in the proceedings, including:

- whether the parties intend to rely on any lay evidence, and if so, the nature of that evidence and its relevance to the issues in dispute;
- the requirement for, and the type of, expert evidence required to deal with the issues in dispute;
- where expert evidence has not been filed, the extent and timing of expert evidence, for example, whether a single expert should be appointed, whether individual expert reports should be filed, and whether joint conferencing and a joint report should be directed;
- where expert evidence has been filed, the reports or parts of the reports to be relied upon by each party; and
- the documents that are required to be included in the bundle of documents to facilitate the resolution of the issues in dispute, including the elimination of any unnecessary documents;

(c) *Direct a timetable up to the hearing:*

Direct a timetable for the future conduct of the proceedings, including making directions for:

- the filing or exchange of documents, affidavits or expert reports;
- the administration and answer of interrogatories (in exceptional cases);
- the request for, and reply to, particulars;
- the filing of written submissions; and
- the filing of draft conditions of consent.

(d) *Direct a timetable for conduct of the hearing:*

Direct a timetable for the conduct of the hearing, including:

- a timetable for the efficient conduct of any site inspection, including a schedule of the on-site locations to be viewed;

- a timetable for the giving of evidence on-site by objectors;
- the allocation of a specific timeframe for the giving of expert evidence in court, including concurrent evidence;
- the allocation of specific witnesses at specific times for the giving of any lay evidence;
- the use of telephone or videoconference facilities and other equipment and technology; and
- the allocation of a specific timeframe during the hearing for the submissions of each party to the proceedings.

(e) *Avoid delay:*

Make directions and fix the proceedings for hearing, so as to avoid delay between filing and finalisation of the proceedings (s 59 of the CPA).

(f) *Ensure proportionality of costs:*

Make directions with the object of resolving the issues between the parties in such a way that the cost to the parties is proportionate to the importance and complexity of the subject matter in dispute (s 60 of the CPA).

Directions the Court may make

14. The Court may give such directions as it thinks fit:

- (a) for the speedy determination of the real issues between the parties to the proceedings (s 61(1) of the CPA) including:
- directing any party to take specified steps;
 - directing any party as to the time within which the specified steps must be completed;
 - directions with respect to the conduct of the proceedings (s 61(2) of the CPA); and
 - sanctions for non-compliance with any directions (s 61(3) of the CPA);

- (b) as to the conduct of the hearing, including directions as to the order in which evidence is to be given, addresses made or questions of fact are to be tried (s 62(1) and (2) of the CPA), including directions:
- limiting the time that may be taken in the examination, cross-examination or re-examination of a witness;
 - limiting the number of witnesses (including expert witnesses) that a party may call;
 - limiting the number of documents that a party may tender in evidence;
 - limiting the time that may be taken in making any oral submissions;
 - that all or any part of any submissions be in writing;
 - limiting the time that may be taken by a party in presenting his or her case;
 - limiting the time that may be taken by the hearing (s 62(3) of the CPA).

Who should attend a case management conference?

15. Those persons responsible for the carriage of the matter should attend the case management conference. Those who attend must:
- (a) have a thorough understanding of the issues in dispute;
 - (b) approach case management in good faith and with a genuine desire to discuss the issues in dispute;
 - (c) have the authority to respond to opportunities to minimise the issues in dispute or agree to potential solutions to the issues in dispute; and
 - (d) have the authority to agree to a timetable for the future conduct of the proceedings.
16. Experts are not required to attend case management conferences unless their contribution is required in order to minimise or settle the issues in dispute. Parties should advise each other of any experts they intend should appear at the case management conference at least 3 days in advance of the date of the conference.

Issued by

The Hon. Justice B J Preston
Chief Judge
Land and Environment Court of New South Wales
On 28 May 2010