

# Litigation law update

October 2014



## South Australian Court Rules

# GREEN LIGHT FOR FAST TRACK LITIGATION And other recent Court changes

From 1 October 2014 there will be significant changes introduced into the South Australian District and Supreme Court. These changes are designed to improve the efficiency and reduce the costs of litigation. Concerns have long been raised that civil litigation costs too much and takes too long. Even simple disputes become mired in the Court system with legal fees ever increasing.

There is no doubt that some matters are extremely complicated or the value of the claim justifies significant care and attention. However, for relatively straightforward matters or matters involving modest claims, the costs and delays associated with civil litigation have become prohibitive.

### **FAST TRACK STREAM**

Accordingly, the Courts will introduce a "*fast track*" stream designed to allow matters to be litigated in a prompt and cost effective way.

Matters can progress in the fast track (either by election or order) if the combined quantum of the claim or any counterclaim does not exceed \$250,000.00 and a Trial of the proceedings is not expected to take more than three days.

However parties can also apply to have matters moved into the fast track scheme, even if they do not meet the criteria, if the circumstances warrant it.

The fast track process is intended to be timely and efficient. Upon the filing in Court of a brief summary of the claim, the matter is listed for an initial hearing to discuss identification of the issues, prospect of settlement, determination of expert witnesses (and other witnesses), the proposed cost regime and the listing of the matter for Trial. The claim has one further Court attendance (Pre Trial hearing) in which the progress of the matter is assessed to ensure that it is still on track. At the Pre Trial hearing the Court officer will once again discuss the prospects of settlement, discussion of the issues in dispute and the production of Trial materials (such as expert reports, tender documents and lists of witnesses). Delays and costs associated with interlocutory issues, arguments regarding pleadings or discovery are all intended to be dealt with efficiently in these hearings.

It is expected that matters will receive a Trial date within six months of the initial hearing. That is a significantly shorter timeframe than ordinary matters currently in the District Court (where Trials are being allocated up to two years after issue).

One of the most significant aspects of the fast track stream is in relation to legal costs.

## LEGAL COSTS

Party-Party Costs in the fast track stream are set out in the Supplementary Rules and provide **fixed** lump sum figures for various stages of the process. There is some discretion in regard to the allowance for costs but even the most complex fast track claim gives rise to a significantly lower entitlement than if the matter were to have proceeded through the usual stream.

## HOW DOES THE FAST TRACK PROCESS HELP?

The fast track process allows parties to consider litigation without the fear or threat of a “*cost blowout*” or having the matter delayed through the Court system for months, (if not years). The fast track stream is designed for single or limited issue matters with the value of the claim less than \$250,000.00.

## IN PRACTICE

Assume a supplier provides materials worth \$100,000.00 to a building site. The account is unpaid and the customer claims the materials are not “fit for purpose”. A dispute arises. Under the current system, if the parties were to litigate the matter is likely to take two years to proceed to Trial. If it does proceed all the way to Trial, it is likely to cost between \$30,000.00 and \$50,000.00 per party (with the unsuccessful party paying their own legal fees and the costs to the other side).

The legal costs of the matter potentially outweigh the value of the claim itself. In addition, the parties are required to wait a lengthy period before resolution. This would be a matter which could fall within the fast track stream. The matter would proceed to Trial within approximately six months and the party-party costs if it were to proceed to a one or two day Trial would be fixed at approximately \$20,000.00 (inclusive of counsel fees).

The fast track stream is an innovative way in which the Courts are endeavouring to deal with the prohibitive costs and delays associated with civil litigation.

## CONTACT

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## OTHER RULE CHANGES

The introduction of the fast track stream is supported by a number of other changes to the District and Supreme Court Rules. These changes include:

- Introduction of pre action protocols (pre issue offers and responses) for construction disputes and medical negligence disputes
- Introduction of streamlined uncontroversial debt claims enabling simplified pleadings to be filed
- Requirement to provide a list of key documents at the time of service of pleadings
- Removal of Litigation Plans other than in actions where particularly required or useful (such as complex commercial disputes, multiple parties etc.)
- Apart from personal injury claims, Settlement Conferences to be conducted by arrangement by the parties. Those conferences can take place at the premises of the law firms or under the auspices of the Court
- First Court hearing will be the Directions Hearing after the Settlement Conference (Status Hearings now removed)
- The time for setting down appeals has now been substantially amended so that a draft Index is to be filed by the appellant within three weeks, settled within five weeks and the Case Books lodged and appeal set down within six weeks (as opposed to the current regime of six months).

There are numerous other rules that have been introduced and consolidated in order to streamline the process of civil litigation.

The Rules operate from 1 October 2014 but apply to matters issued prior to 1 October with respect to any subsequent step or action taken in the proceedings. If you have any queries or questions regarding the fast track scheme or amendments to the Rules, please refer to your legal advisors or contact Hunt & Hunt Lawyers.

### Author

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