

Case Management

- CPA Division 2 of Part 6:
 - s 61: Directions as to practice and procedure generally. Subsection 1 states the court may give orders as it thinks fit for the speedy determination of the real issues.
 - s 62 Directions as to conduct of hearing.
 - s 63: directions with respect to procedural irregularities. Failure to comply does not invalidate the proceedings, subject to subsection 3 where the court has power to set aside proceedings.
- UCPR Part 2:
 - r 2.1 - the court may give directions and make such orders for the conduct of any proceedings as appear convenient for the just, quick and cheap disposal of the proceedings .
 - r 2.3 - directions and orders may relate to and of the listed court processes for the purposes of case management.
- Application:
 - Courts balance the **dictates of justice** (allowing parties to make amendments etc) against the need to keep **proportionate costs** and **eliminating delay**.
 - Court is required to give weight to all three considerations: *Dennis v Australian Broadcasting Corp.*
 - The powers of the court to issue directions and so on under the CPA and the UCPR mean that the process of justice is overlaid with the consideration of delay and costs: *Aon Risk Services Australia v ANU*

There is no right to an indulgence (eg, amendments of pleadings or adjournments), costs order not always

SUMMARY DISPOSAL

1. Default judgment – Part 16

- When D fails to file a defence within 28 days (or affidavit)
- **Notice of Motion: Form 38 for default judgment liquidated claim, & Affidavit of Service [SOC & Affidavit in support]:** of proof of debt (proving the SOC was served and on what date, and to show time has elapsed with no action or correspondence)

Elements to set aside: *Borowiak v Hobbs [2006]*

- (1) **Bona fide defence on the merits**
- (2) **Why they deserve to set aside, explain the delay and why the default occurred**
- (3) **Interests of justice that you may be allowed to defend the matter on the merits of the case** (*Borowiak v Hobbs*)
- (4) **Prejudice to the P if the default is set aside** (set out a chronology: *Dunwoodie v Teachers Mutual Bank Ltd*)
- (5) Do the interests of justice require that a defendant be allowed to defend a matter on the merits.
- (6) **D is penalized by awarding costs to OS**

(7) Evidence to prove this must be drafted and apply to the court

For a court to set aside a default judgment, an affidavit must be prepared to show;

- A defence on the merits. A draft defence should be prepared to annex to the affidavit
- An explanation for why you were unable to appear; and
- An explanation for any delay in applying for the default judgment to be set aside.

In deciding if the judgment is to be set aside, the court will have regard to;

- Whether there is a satisfactory explanation for the failure to appear?
- Is there a delay in bringing the application such as to preclude defendant from obtaining relief?
- If the defendant had attended the hearing, would they had been granted leave to defend?