

Resolving Civil Disputes
JURD 7271

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Setting Aside Default Judgement. **Error! Bookmark not defined.**

Summary Judgement**Error! Bookmark not defined.**

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Steps in civil litigation

1. Pre-commencement (e.g. letter of demand + preliminary discovery)
2. Filing and Service of Originating Process (statement of claim or summons served)
3. Particulars (defendant might ask for more information or attempt to strike out claim)
4. Defences/Cross-claims
5. Discovery
6. Filing of evidence
7. Affidavits
8. Trial

Courts and Filing

Inherent and Implied Jurisdiction

- Superior courts of record (such as the Supreme Court) have an inherent jurisdiction to regulate their processes and prevent an abuse of process. **Jago v District Court of New South Wales**
- The District Court and Local Court have a limited jurisdiction which arises expressly under statute or is derived by implication from statutory provisions conferring particular jurisdiction. Lower courts also have implied power to do everything necessary for regulating itself: **Grassby v R.**

'Necessary' is defined as 'reasonably required' and not 'essential': **Pelechowski v Registrar.**

However also implied jurisdiction: "there is an implied power to do that which is required for the effective exercise of its jurisdiction" – **TKWJ v The Queen** 2002 HCA (Gaudron J at 44)

Court structure overview

NSWSC

- Highest state court in NSW
- Operates under Supreme Court Act 1970 and CPA 2005
- Unlimited civil jurisdiction and most serious criminal
- Can hear all matters that are not within exclusive jurisdiction of federal courts
- Common Law Division deals with civil, criminal and administrative law matters where more than \$750,000 is claimed
- Also Equity and Appellate Divisions

NSWDC

- "Intermediate court" in NSW
- Civil – limited of \$750,000 (though can deal with larger amounts if parties agree)
- Unlimited jurisdiction in claims for damages for personal injuries arising out of motor vehicle accident or work injury

NSWLC

- Small Claims Division: claims up to \$10,000
- General Division \$10,000 - \$100,000

- Jurisdictional limit of \$60,000 for personal injury or death claims (s29 Local Court Act 2007)
- Also has jurisdiction to hear criminal summary prosecutions, committal hearings, matters concerning mental health issues, some family law matters, children's criminal proceedings (the Children's Court), juvenile prosecutions and care matters, licensing issues and coronial matters (the Coronial Court)

Nb Federal Magistrates Court renamed the Federal Circuit Court (now called judges not magistrates) (part of Federal Court Structure)

Overriding purpose

The '**just, quick and cheap resolution** of the real issues in the proceedings': s 56 (1) CPA.

S 56(2) requires the **court to give effect** to the overriding purpose when it exercises any power.

S 56(3) requires **parties to act in accordance** with the overriding purpose and comply with procedures.

S 56(4) parties to proceedings must **assist the court in furthering the overriding purpose** and a solicitor cannot cause a party to breach this obligation

Case Management s 57

(1) Proceedings managed having regard to:

- (a) Determination of proceedings
- (b) Efficient disposal of business of court
- (c) Efficient use of available judicial and admin resources
- (d) Timely disposal of proceedings

JUST – s 58 – court to follow dictates of justice

1 – In deciding

- (a) Orders or direction for management of proceedings
- (b) Terms

2 – Determining what are dictates of justice court

- (a) Regards to provisions of ss 56 – 57
- (b) Following matters – PG 88

QUICK – s 59 – Elimination of delay – practice and procedure to eliminate delay

CHEAP – s 60 – Proportionality of Costs – costs are proportionate to parties

Directions

After using the principles the courts have the power to enact them during the hearing.

s 61 directions as to practice and procedure generally.

- (1) States the court may give orders as it thinks fit for the speedy determination of the real issues.
- (2) In particular orders given
 - (a) Direct party to take steps
 - (b) Time for steps to be completed
 - (c) Conduct of proceedings
- (3) – Failure to comply
 - (a) Dismiss proceedings, to whole or particular action/ claim
 - (b) Strike out or limit defence by D – give judgement accordingly
 - (d) Strike out or amend document filed by party
 - (e) disallow or eject evidence
 - (f) pay costs of other party
 - (g) give orders or other direction as according

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) power to set aside proceedings.

UCPR Part 2: JUST, QUICK AND CHEAP

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 2.2 – appoint for hearings, court at any time can make appointment.

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.)**

Case management should not prevail over the injustice of shutting the applicants from raising an arguable defence. **(Queensland v JL holdings PTY Ltd)**

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 sufficient to compensate injustice: **(Aon Risk Services Australia v ANU)**