



# Managing civil litigation – Federal Court style

By The Hon Justice Jacqueline Gleeson

## National Court Framework

In 2015 the Federal Court established the National Court Framework (NCF). The key aim of the NCF is to reinvigorate the Court's approach to case management so that the Court is better placed to meet the demands of litigants and can operate as a truly national and international Court.

## National Practice Areas

The Court's workload has been reorganised by reference to nine National Practice Areas (NPA) and, where applicable, sub-areas. Each NPA and sub-area has dedicated webpages on the Court's website.

These webpages contain a summary of the NPA and any related sub-area, as well as key NPA-specific resources, such as relevant



forms, rules, legislation, practice notes, latest judgments and speeches.

The judges assigned to the various NPAs and sub-areas are identified on the Court website.

The filing party nominates a relevant NPA, although that nomination is not determinative. When a matter is filed, the Court promptly identifies the appropriate NPA and the matter is then allocated to a judge in that NPA. In some cases, proceedings are provisionally allocated to the coordinating judge in a specific NPA for initial case management, where issues may be clarified and the matter timetabled, before being allocated to an individual judge's docket for further case management, if required, and substantive determination.

The NPAs are:

1. Administrative & Constitutional Law & Human Rights.
2. Admiralty & Maritime.
3. Commercial & Corporations.
4. Employment & Industrial Relations.
5. Federal Crime & Related Proceedings.
6. Intellectual Property.
7. Native Title.
8. Other Federal Jurisdiction.
9. Taxation.

‘Other Federal Jurisdiction’ includes defamiation, common law claims, civil aviation and the Court of Disputed Returns.

The Commercial & Corporations NPA has the following six sub-areas:

1. Commercial Contracts, Banking, Finance and Insurance.
2. Corporations & Corporate Insolvency.
3. General & Personal Insolvency.
4. Economic Regulator, Competition & Access.
5. Regulator & Consumer Protection.
6. International Commercial Arbitration.

The Intellectual Property NPA has the following three sub-areas:

1. Patents & Associates Statutes.
2. Trade Marks.
3. Copyright & Industrial Design.

#### *Insurance List for Short Matters*

The Insurance List sits within the Commercial Contracts, Banking, Finance and Insurance sub-area. The list caters for the prompt and efficient resolution of legal issues affecting members of the insurance community, enabling the parties to resolve their disputes without the need for full-blown hearings where a crucial issue could be decided discretely and swiftly.

The list is not intended to deal with all insurance claims, but principally short matters, especially of policy interpretation and concerning the operation of insurance legislation. The list covers marine as well as non-marine insurance.

The list has been running successfully since March 2016, and has dealt with over 50 matters, including 10 since April 2019. The Chief Justice has typically conducted initial case management of all matters in the list and has heard many of the matters that have proceeded to a hearing. Two matters

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have also had separate questions heard by a Full Court.

#### **National Practice Notes**

The Court has issued 27 national practice notes that set out the Court’s case management principles and procedures. The practice notes are published on the Court’s website.

Practitioners are expected to be familiar with the practices notes that apply to their cases. In general, practice notes are issued to:

1. complement particular legislative provisions or rules of Court;
2. set out procedures for particular types of proceedings; and
3. notify parties and their lawyers of particular matters that may require their attention.

The Court’s practice notes fall into four categories:

1. The Central Practice Note (CPN-1).
2. NPA practice notes. Currently, each NPA, excluding the Other Federal Jurisdiction NPA, has an NPA practice note.
3. General Practice Notes (GPNs).
4. The Appeals Practice Note.

CPN-1 is the core practice note for Court users and addresses the guiding NCF case management principles applicable to all NPAs. One of its main aims is to ensure that case management is not process-driven or prescriptive, but flexible: parties and practitioners are encouraged and expected to take a commonsense and cooperative approach to litigation to reduce its time and cost.

The GPNs apply to all or many cases across NPAs, or otherwise address important administrative matters. They set out particular arrangements or information concerning a variety of key areas, such as class actions, expert evidence, survey evidence, costs, subpoenas and technology.

The Court is in the process of preparing comprehensive practice notes outlining the

management of, and requirements relating to, appeals and related applications. In the interim, the Court has:

1. revoked the former Practice Note APP 1;
2. partially amended and reissued Practice Note APP 2 – Content of appeal books and preparation for hearing; and
3. set out further information regarding appeals on the Court’s website, accessible from the appeals homepage.

#### **Urgent (Duty) matters**

The Court has adopted a nationally consistent approach to dealing with urgent matters by duty judges or a General Duty judge in the Commercial & Corporations NPA. A separate regime applies to urgent Admiralty & Maritime NPA matters.

The Court actively assists parties to bring on applications that may require an urgent listing at the earliest appropriate time, whether in a proceeding which has not yet been commenced or in a proceeding that has already been docketed to a judge.

The Court’s website contains information about how to apply for urgent relief. The daily Court lists identify the Commercial & Corporations duty judge and the General Duty judge for each Registry.

#### **Electronic Court File**

Since 2014, all proceedings filed with the Court have an electronic Court file. All documents filed in those proceedings are filed electronically only. Original documents are retained by the instructing solicitor, or the self-represented litigant as applicable. Court orders are entered electronically.

#### **Conclusion**

The Bar plays a key role in enabling effective case management in the Federal Court, by understanding the Court’s case management framework and deploying it to facilitate the just resolution of disputes, according to law and as quickly, inexpensively and efficiently as possible.

#### **Postscript**

The Bar’s attention is drawn to *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited* [2019] FCA 1284, where Allsop CJ recently set out expectations for case management in the context of alleged statutory unconscionability.