

COPY

11 May 2015

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Dear Attorney,

Resolution Registrar - Supreme Court

I write to seek your support for the creation of the position of Resolution Registrar at the Supreme Court.

Background

A few years ago, I convened the Better Resolution Group ("BRG") to identify strategies to address the growing complexity and length of civil litigation. The group consisted of judges of the Supreme and District Courts, the President of the Land Court, a representative from the Magistrates Court and senior legal practitioners from the private and public sectors as well as departmental representatives. One of its initiatives is to propose creating, and filling, a position of Resolution Registrar for the Supreme Court.

Civil lodgments in the Supreme Court decreased as a result of the *Civil and Criminal Jurisdiction Reform and Modernisation (Amendment) Act 2010*. The BRG, however, noted an increase in the number of complex civil cases in the Supreme Court. This trend is reflected in the number of cases on the Supreme Court's Supervised Case List ("SCL") and Commercial List ("CL").

The SCL is superintended by three judges. It provides for judicial management of cases where a hearing is expected to exceed five days or where supervision is warranted because of the complexity of the matter or the number of parties. While most cases are placed on the list at the request of the parties, cases also reach the list through the Court's initiative: for example, where a judge conducting an interlocutory hearing sees a need for ongoing judicial supervision.

Cases on the SCL include complex building and engineering claims, public liability and other insurance litigation, personal injury claims, deceased estate disputes, de facto property claims and defamation claims.

A relatively new, and already significant, function of the SCL is to assist self-represented litigants (“SRL”) in conducting their cases. This development was in response to difficulties both for the SRL and the other side in progressing proceedings involving SRL. Practice Direction 10 of 2014 aims to ensure timely provision of information to SRL and adds their cases to the SCL for increased supervision.

As at 1 July 2013, there were 74 active cases on the SCL. In the 12 months to 30 June 2014, 116 cases were added. In that period, 89 cases went off the list. Of those, 36 were determined by adjudication, 3 resulted in a default judgment, 23 recorded a settlement, 22 had a notice of discontinuance filed, 4 were deemed finalised and 1 was removed from the list by order. As at 30 June 2014, there were 101 active cases on the list.

A total of 391 reviews were conducted in the 12 month period (not all requiring appearances).

The increase in SCL matters can be attributed to several factors, including greater utilisation of the list by practitioners, more references from other lists (such as Case Flow), and the need of SRL for assistance in preparing and presenting their cases.

Unfortunately, some cases do not get on the SCL until the parties lodge a request for a trial date with an estimation that the trial will occupy longer than five days. In that instance, the matter will be referred to a SCL judge and reviewed. Earlier intervention by a Resolution Registrar should result in improved efficiencies and use of judicial resources.

The CL provides for the prompt determination of proceedings involving commercial issues. The list is superintended by two judges. A case is placed on the list if a CL judge considers that it is appropriate for inclusion having regard to the issues in dispute, whether there are circumstances of urgency and estimates of the length of the trial. A judge who places a matter on the CL retains management of the case and usually hears contested interlocutory applications and the trial.

The CL remains active. As at 30 June 2014, there were 57 cases on this list, 71 cases being added during the year and 64 being removed from the list, of which 18 were disposed of by an adjudication or final order, compared with 68 on 30 June 2007. There were 213 review hearings during 2013-14, compared with 311 the previous year.

As at 7 April 2015, 39 matters in the Supreme Court’s backlog of civil cases two years or older are found on the SCL (19) and CL (20). Currently, 20 cases on the SCL are older than three years, and five are older than five years. Three cases on the CL are older than three years, and one is older than five years.

The BRG identified a number of factors which contribute significantly to the costs in Supreme Court civil litigation and to delay in disposition, including:

- (a) an absence of early, appropriate intervention to assist the parties to identify the matters truly in issue and to formulate a case management plan directed to early resolution; and

- (b) the adoption by parties of an expansive approach to disclosure of documents in circumstances where complex civil cases are often attended by large volumes of electronic and other documentation.

While the eTrials technology has provided a useful tool to overcome some of these problems at trial, it does not deal with the core issues.

The BRG recommended the expansion of the case management strategies to include the creation of the role of a Resolution Registrar to the civil jurisdiction of the Supreme Court at Brisbane. This would be supported by other strategies such as the provision of detailed Practice Directions.

A committee of judges was appointed by the Supreme Court to implement the International Framework for Court Excellence. That committee (which I chair and which also comprises the Chief Justice, the President of the Court of Appeal, and Justices Atkinson, Mullins, McMeekin and Jackson) has commended the appointment of a Resolution Registrar as a priority to reduce delay and costs.

Role of Resolution Registrar

If appointed, the Resolution Registrar would work closely with the judges (particularly the Case Flow Management, SCL and CL judges) to:

- with the e-Trials Registrar, manage e-Trials;
- identify early those matters where case management is warranted;
- assist the parties to refine the issues;
- closely support SRL to identify and access suitable resources to more appropriately conduct their proceedings;
- assist the parties to refine the parameters of disclosure and assist them in achieving compliance with the relevant Rules of Court and Practice Directions concerning disclosure;
- provide advice and/or direction to the parties and judges about technically appropriate approaches to disclosure;
- assist the parties to develop suitable case management plans (including disclosure) and frame appropriate orders;
- make enforceable case management orders with consequences for non-compliance;
- monitor and redirect compliance and progress with agreed plans; and
- exercise delegated and Rules-based powers to assist in the progress of matters;
- encourage early compromise.

Attributes of Resolution Registrar

In order to be effective, the Resolution Registrar would:

- be a qualified legal practitioner with experience and credibility in commercial litigation;
- have a comprehensive knowledge and understanding of practices for the management and storage of documents and information in the legal and commercial arenas;
- have an understanding of the various technical and information technology components of such document, storage and information management practices and systems; and

- have superior communication and mediation skills to synthesise these areas of knowledge, create a shared understanding and generate agreements or outcomes.

Benefits of Resolution Registrar

The Resolution Registrar would generate the following benefits:

- through the refinement of issues and improved preparation of the parties:
 - increased resolution without trial (increased finalisations and improved clearance rates);
 - decreased interlocutory applications;
 - less time from commencement to final resolution;
 - shorter, less complex trials;
 - simpler transition to an eTrial when appropriate;
- savings to the parties through reduced legal costs;
- increased judicial availability leading to reduced waiting times for trials for other matters (reduced backlogs); and
- improved support for judges requiring technical advice about the practicalities of information technology focused information and document management.

Business Case approved

A business case to create the position has received the in principle support of the Department of Justice and Attorney-General.

Cost

It is expected that the Resolution Registrar would be remunerated at the Senior Officer level (similar to the Registrar, Alternative Dispute Resolution, Planning and Environment Court), i.e. a fortnightly salary of approximately \$4,900 and yearly salary of \$150,000 (including on costs).

Your support sought

May I ask that you give favourable consideration to the appointment of a Supreme Court Resolution Registrar.

Yours sincerely

Justice John H Byrne AO RFD
Senior Judge Administrator

cc. Mr David Mackie
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