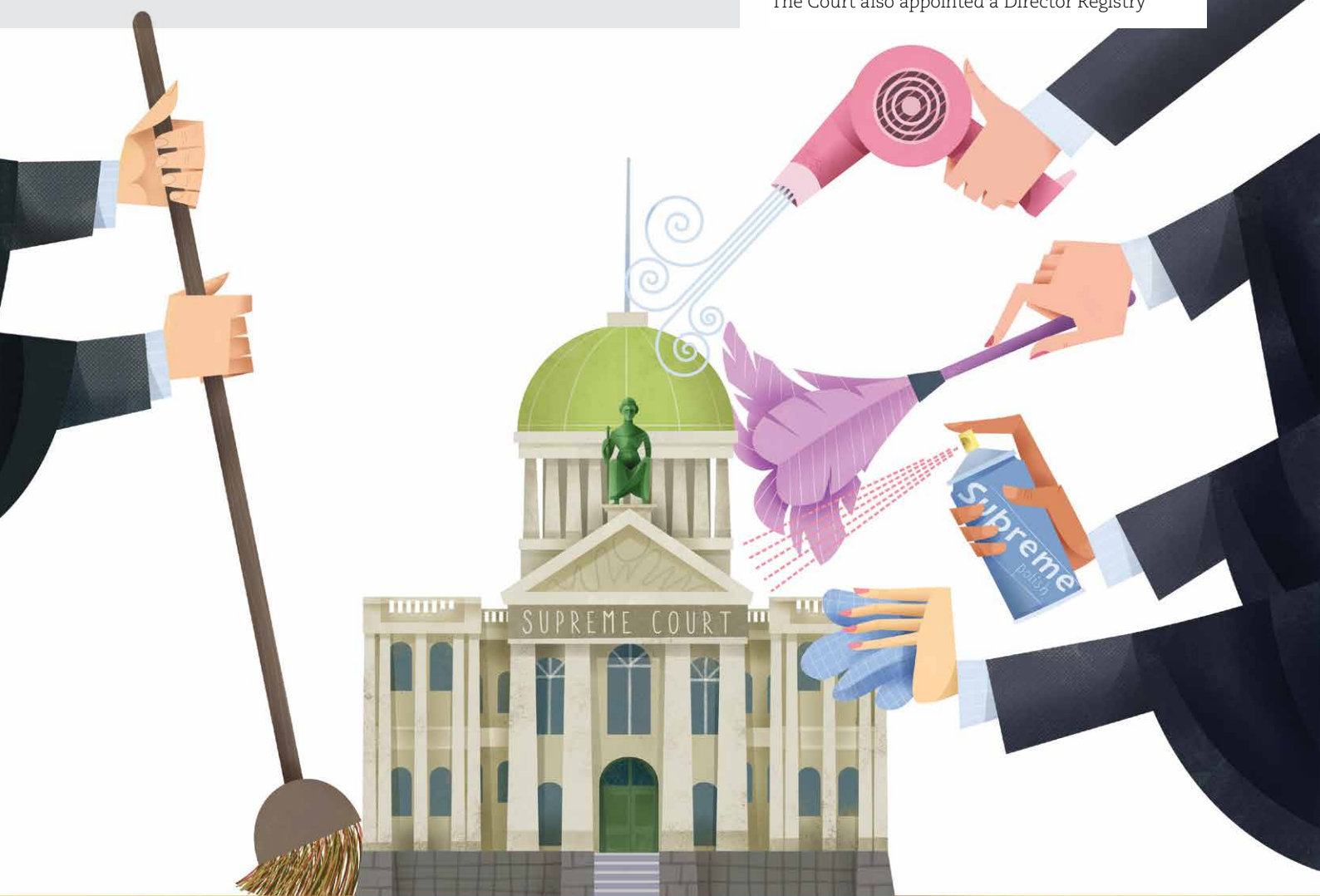


CLIP bears fruit

The Supreme Court has been committed to improving its practices and delivering efficiencies. The Common Law Improvement Project is a recent initiative. **BY JUSTICE JACK FORREST**

The Supreme Court of Victoria is committed to continuously improving its practices and delivering efficiencies in the case management of its lists. For some time now the Court has been aligning its caseload against specialised lists or practice areas on the understanding that this delivers many benefits to users.

This process of modernisation saw a restructure of the Court in 2014 with the Commercial Court becoming a division in its own right. The Court of Appeal introduced significant reforms to the management of civil appeals, which were themselves based on successful reforms to the criminal appeal process introduced in early 2011. The Court also appointed a Director Registry



SNAPSHOT

- Procedural reforms are underway in the Common Law Division of the Supreme Court of Victoria.
- New case management models focusing attention on specialist lists and appropriate allocation of functions among judges, associate judges, judicial registrars and registry lawyers are being developed.
- The reforms are aimed at earlier resolution of matters, better prepared cases and an overall reduction in cost to parties and the Court.

Development to review and reform practices in the Principal Registry in response to the growing number of documents filed, the increasing complexity of matters, and a surge in self-represented litigants requiring procedural guidance.

Over the past nine months the focus has switched to the Common Law Division with a team of judges, lawyers and court administrators working on the Common Law Improvement Project (CLIP).

This project is already producing some pleasing results in terms of helping to better define and, in some cases, reduce issues in dispute, with a consequent reduction in hearing time and cost to parties and the Court. Increased specialisation in case management has contributed to greater consistency in practice and promotes the development of jurisprudence in a particular area of law.

Reforms already implemented as part of CLIP have lightened the load of judicial officers when it comes to pre-trial case management, leaving them more time for the core tasks of hearing and determining matters.

This means the Court is better equipped to give effect to the overarching purpose of the *Civil Procedure Act 2010* (Vic) (CPA) – the just, efficient, timely and cost-effective resolution of the real issues in dispute. The Court takes this mandate very seriously as demonstrated in an increasing number of cases in which the overarching purpose and obligations imposed on people involved in civil litigation have featured prominently.¹

The authorities² make it clear that while the interests of justice remain the primary concern for the Court, the range of considerations that courts must take into account in managing proceedings is not limited to the interests of the parties. A balance must be struck between those interests and the public interest in managing civil proceedings in accordance with the overarching purpose of the CPA so that as many people as possible who require resolution of a dispute within this Court's jurisdiction actually receive that access to justice.

Judges have been active in managing litigation from initiation to trial for some years. However, the growth in the number and complexity of matters has stretched judicial capacity. In very large lists, the time the managing judge has to devote to pre-trial management of individual matters is very limited. The more time spent on pre-trial case management, the less time available to judges to hear and determine cases.

CLIP is about efficient and appropriate pre-trial case management and must be the way forward if the Court is to keep up with the ever-increasing demand on its resources while ensuring that the interests of justice are served and litigants have access to the most cost effective avenue possible for resolving disputes within the Court's jurisdiction.

Work of the Common Law Division

The great majority of plaintiffs in the Common Law Division are private citizens seeking judicial review of government actions, or redress in respect of transport accidents, work-related injuries and disputes, defamation, land acquisition, medical negligence, institutional abuse, professional negligence, distribution of estates, or disputes over wills.

The Division contains some of the busiest lists in the Court including the Personal Injuries and Dust Diseases Lists, two of the largest specialist lists. Between them, these lists represent approximately 40 per cent of the Division's pending cases.

Any litigation can inflict significant emotional, financial and reputational burden on both plaintiff and defendant, even more so when it comes to personal injury. The Common Law Division of this Court deals with the most serious or complex injuries and it is in the interests of all concerned to ensure that such cases are dealt with as efficiently and expeditiously as possible.

The Major Torts List illustrates this approach. It manages complex tortious claims, cases of significant public interest and common law class actions, for example, bushfire and refugee class actions, product liability and public health claims such as the Bonsoy, Thalidomide and Hepatitis C class actions.

The other specialist lists of the division are: Judicial Review and Appeals; Testators Family Maintenance; Civil Circuit; Valuation, Compensation and Planning; Professional Liability; Probate; and the new Employment and Industrial List which commenced on 1 January 2016 and provides specialist judicial management of non-injury related employment disputes.

What the Court is doing and why

The Productivity Commission in its Access to Justice Arrangements report of September 2014³ identified factors that contribute to unnecessary cost and delay in litigation including:

- a lack of early identification and narrowing of issues, including problems with pleadings
- a lack of proactive judicial case management
- a lack of judicial specialisation, ownership and continuity

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- unnecessary interlocutory steps and excessive time and resources being devoted to interlocutory disputes
- a lack of adherence to time lines set by the court
- inefficient listing practices.

The Commission acknowledged that not all these factors are within the courts' control and recognised that a number of reforms had already been implemented by courts to address these factors. With the right resources there is clearly more that can be done and the Commission emphasised that well-targeted and appropriately employed case management can yield significant benefits in terms of improved efficiency and reduced cost and delay.

The Boston Consulting Group (BCG) was asked to review the performance of the Supreme Court in 2009 and recommend opportunities to better enable the Court to sustainably deliver against its guiding principles over the long term. A subsequent review of the Trial Division in 2014 noted that the Court had already implemented a number of innovations, particularly in the Personal Injuries List, which had resulted in significant productivity improvements. These reforms included a greater degree of specialisation combined with effective case management, early intervention, increased delegation and effective teamwork. BCG also identified a need for resourcing to refine and implement the model more broadly.

These reforms appear to be already bearing fruit in terms of cost and time savings to litigants.

With this in mind, concerted efforts have been made by the Court over the past 12 months to stream all matters issued in the Common Law Division into the specialist lists to ensure they are appropriately managed. This has more than halved the number of proceedings in the Court's generic lists and means that matters are more likely to be more actively managed and less likely to slip through the cracks.

Support for specialised lists requires the Court to organise its resources to meet demand and, in 2015, the Court obtained short-term funding to employ two experienced legal practitioners on a fixed-term basis to work with the Common Law judges in the implementation of the lists. In late 2015, Chief Justice Marilyn Warren appointed Judicial Registrar David Ware as the Common Law Division's first dedicated judicial registrar.

Judicial registrars have been contributing to the success of the Costs Court, Funds in Court, Court of Appeal and

Commercial Court, and registry lawyers have been operating in the Court of Appeal and Commercial Court as case managers. Legally qualified registrars have also been active in case management for many years in the NSW Supreme Court, the Federal Court and the High Court.

A new model for civil case management

The primary task of the CLIP team has been the design of a new case management model for the large Personal Injuries and Dust Diseases Lists which will, if successful, be adapted to manage other lists across the Division.

This new case management model is aimed at modernising and reforming the practices and procedures in these lists in order to continue to meet growing demand and ensure the best use of the Court's judicial officers, staff and resources.

The model focuses on the appropriate allocation of judicial functions among judges, associate judges and judicial registrars with experienced legal practitioners acting as case managers to assist and streamline processes. Its aim is to achieve less delay, earlier resolution of matters, fewer trial adjournments, better prepared cases reaching trial and an overall reduction in costs to the parties and the Court.

The CLIP team developed certain principles of case management in line with the CPA, and while there can be no one size fits all model for all the specialist lists, the appropriate deployment of lawyers within each list as case managers is proving to be of great assistance to judicial officers in ensuring that matters are "judge ready" by the time they get to court.

The lawyers triage cases at an early stage to ensure they are in the appropriate list and flag any issues which may require particular judicial management such as pleading deficiencies or evidentiary or procedural gaps. Importantly, they act as a point of contact for the profession concerning strategic list management issues providing an important avenue for dialogue with court users.

This frees up trial and associate judges to hear and determine matters more expeditiously, improving both access to and, it is hoped, the cost of justice.

These reforms appear to be already bearing fruit in terms of cost and time savings to litigants. Preliminary analysis indicates that cases in the Personal Injuries and Dust Diseases Lists are taking less time to resolve and there has been a reduction in the number of court attendances in those lists.

Judicial registrars also play an important role in the new case management model and a pilot program has commenced which has seen Judicial Registrar Ware involved in managing matters in the Personal Injuries and Judicial Review and Appeals Lists. The Judicial Registrar has been working with registry lawyers in the early triaging of matters



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and, in the case of the Personal Injuries List, the making of timetabling orders, determining certain non-contentious interlocutory applications and presiding over directions hearings.

In addition, the judicial registrar oversees adherence to timetables in Personal Injuries List matters by way of an additional directions hearing shortly after the date by which parties are to have mediated the dispute. This is designed to ensure that matters which remain unresolved at that stage are on track for trial.

In other reform measures, cases in lists which do not have a dedicated associate judge are now docketed to the associate judge before whom they are first listed for an interlocutory application or initial directions. This should ensure greater familiarity with the case and a consequent saving in both preparation and hearing time.

Implications for practitioners

In addition to time and cost savings for their matters, other benefits to practitioners include:

- greater procedural clarity
- more streamlined registry processes
- improved compliance with overarching obligations and court orders

- greater familiarity of judicial officers with matters
- quicker turnaround time for orders and judgments.

If ongoing funding can be secured so that the new case management initiatives can be continued in the Personal Injuries and Dust Diseases Lists and rolled out across the Common Law Division, there will also be opportunities for legal practitioners to join the Supreme Court to work with its judicial officers.

The Common Law Division is a vibrant and interesting area of the Court's jurisdiction and I am looking forward to this next phase of its development. ■

Justice Jack Forrest is Principal Judge of the Common Law Division of the Supreme Court of Victoria.

1. Examples include *Northern Health v Kuipers* [2015] VSCA 172; *Actrol Parts Pty Ltd v Coppi (No 3)* [2015] VSC 758; *Stagliano (as administrator of Estate of Manlio (dec'd)) v Scerri* [2015] VSC 733; *Mandie v Memart Nominees Pty Ltd (as trustee for David Mandie Family Trust)* [2015] VSC 622; *Batrouney v Forster (No 2)* [2015] VSC 541; *Gibb v Gibb* [2015] VSC 35; *Yara Australia Pty Ltd v Oswal* (2013) 41 VR 302 VSC 758.

2. *Aon Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175; *Ultra Thoroughbred Racing v Those Certain Underwriters & Ors (Ruling)* [2011] VSC 370; *Northern Health v Kuipers* [2015] VSCA 172.

3. www.pc.gov.au/inquiries/completed/access-justice/report.

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