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Lower court pre-lodgement notices to encourage ADR

Andrew Cannon

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The ADR Bulletin

The monthly newsletter on dispute resolution



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General Editor



Laurence Boule

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Information contained in
this bulletin is current
as at May 2000.

ADR in the courts

Lower court pre-lodgement notices to encourage ADR

Andrew Cannon

Lower court involvement in ADR

The proper role of lower courts is to enforce legal obligations and, where necessary, to determine the extent of those obligations.

In the South Australian Magistrates Court in the financial year 1998/9, 51,793 claims were commenced, while in the same period only 4861 defences were filed. Of the defended cases, only about 500 went to verdict after trial. In percentage terms about 10 per cent of filed claims were defended and 1 per cent of filed claims received a judgment after trial. In the calendar year 1998 judgment creditors issued 39,421 processes enforcing judgments.¹ Where the extent of the parties' obligations are disputed, the court's task is to decide a version of the facts and then to apply the law to them. In performing these functions they provide the touchstone² against which negotiations are measured. In LEADR terms, the BATNA, WATNA and MLATNA³ are based on predictions of the result if the dispute is determined by the court.

It follows from this that lower courts should not make ADR an obstacle to the primary role of factual determination. I am opposed to compulsory mediation being imposed by courts, either before action or as a precondition to trial, because this is a barrier to and an abdication of this primary function.

However, if lower courts provide an accessible and affordable determination process, and thereby fulfill their primary role, it is also appropriate for them to encourage parties to settle before action and to provide access to credible processes to that end. This article discusses two types of pre-lodgement notice of claim used in the Magistrates Court in South Australia. Both encourage settlement by the parties before the filing of a claim with the court. The first is specific to personal injury claims and applies to all South Australian state courts. In conjunction with some other factors it was effective in dramatically reducing the number of such claims reaching courts in South Australia. The discussion is based on research from my 1996 thesis, *An evaluation of some ways of limiting and reducing the costs to parties of conducting litigation in the Magistrates Court (Civil Division) in South Australia*, for a Master of Laws (Honours) degree at the University of Wollongong.

Last year the Magistrates Court introduced a court-prescribed final notice of claim which is available for all types of claim. The common law position has always been that a final warning should be given before an action is commenced at a court. The court-prescribed form is optional and lawyers can still give final notice by letter as they have done traditionally. However, by prescribing ➤



Editorial Panel



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➤ its own final notice before action, the court is extending the reach of the rules and taking the opportunity to provide pre-action ADR by LEADR-trained mediators, and court expert advice, to the parties. The second part of this article is material describing the operation of this new procedure. The final notice form and explanatory material available to the public are reproduced. The extent of use of the procedure is described, but it is too early to provide detailed research on its impact.

Once an action is commenced in a court, I share some of the concerns expressed in the American literature (for example by Judith Resnik)⁴ about devaluing the judicial role by mixing it with other non-determinative roles. However if the factual basis of a matter is certain, or if the uncertain areas are carefully identified and the implications of that uncertainty are spelt out, I see no profound objection to judicial officers being involved in settlement negotiations. They may have a duty to ensure that any agreement reached is appropriate to the legal and factual position. This would require skills and involvement beyond the judicial role in the traditional common law adversary model.

Within our own system, judges and magistrates in fact often assist in settling cases. It might be better to formalise the basis upon which they do this so that appropriate safeguards are in place, rather than pretend it does not happen while it continues in an ad hoc and unstructured way. This, however, is not relevant to pre-lodgement schemes and I leave discussion of that for another occasion. Provided any pre-lodgement services implemented by the court are not obligatory and are of high quality, there is no obvious philosophical objection to these schemes.

An evaluation of the 90 day pre-action notice in personal injury claims

In South Australia, all third party personal injury motor vehicle insurance is held by SGIC (now the Motor Accident Corporation). In 1991 SGIC had initiated informal conferences to deal with the backlog of pre-1990 personal injury actions

in the District Court. This led SGIC to establish in August 1992 a settlement conference team of experienced claims officers to endeavour to settle claims before legal proceedings were issued. This team resolved, on average, 100 claims per month, with a settlement rate of 85 to 95 per cent.⁵ As evidence of the success of this approach, the average time to settle CTP claims was reduced from 31 months in 1991 to 25 months in 1993.

In 1993 the Crown Solicitor made representations to the Chief Justice on behalf of SGIC. As a result, at the end of 1993 all civil courts in South Australia introduced rule amendments to provide that a plaintiff in an action for damages for personal injuries who failed to give at least 90 days notice of the claim to the defendant's insurer or the defendant is not entitled to the costs of preparing and filing the claim.⁶ In the Magistrates Court this rule affected all actions commenced after 7 March 1994.⁷

Most defendants of personal injury actions are insured against any liability arising from this rule. The purpose of the rule is to give the insurer an opportunity to settle the claim before the substantial additional costs of initiating a court action are incurred by the plaintiff and, ultimately, paid for by the defendant if the claim is successful. SGIC is the insurer of the overwhelming majority of defendants in personal injury claims in South Australian courts. The number of these claims has declined substantially. An analysis of data made available by SGIC has been conducted to assess the extent to which the decline in personal injury matters commenced in the Magistrates Court can be attributed to the introduction of this rule rather than other factors such as a change in policy by SGIC, a decline in the number of accidents, less incentive to claim due to reduction in level of general damages, or other factors. Interviews of legal practitioners who specialise in personal injury claims (from both plaintiffs' and defendants' perspectives) have been conducted to ascertain their view of the cause of the reduction in personal injury claims and the effectiveness of the new procedure.

The data and graphical analysis of this research is in the tables which accompany this article. These show that a steady ➤



➤ increase in the ratio of medico-legal expense to total payout and delay in closing files both peaked in 1991/2, by which time the trend reversed; by 1993/4 both the ratio and the delay had been reduced significantly.⁸ Further reduction in both is evident in 1994/5. The obvious cause of this is the settlement of claims earlier, before incurring some of the medico-legal costs in filing a claim and taking it through the court proceedings to settlement or trial. Between 1991/2 and 1994/5 the net amount paid to claimants as a percentage of the total amount paid out (after deducting all medico-legal costs paid by SGIC and cost of assessors, private investigators and police reports) increased from 77 per cent to 83 per cent. The defendant legal costs were reduced from nearly \$18 million to \$11 million and the plaintiff legal costs from nearly \$23 million to \$12 million. In the same period, due probably to the capping of damages by statute,⁹ the payout to claimants reduced. In the same period the average age of the files closed decreased from 31 months to 25 months.

These figures would tend to understate the reductions, because they are an analysis of files closed in each year and include many older files which have not been exposed to the new settlement strategy. The reductions were clearly evident by 1993/4. The rule amendment was not introduced until the end of 1993. The time lag implicit in these figures suggests that the reduction evident by then was due to the efforts of the SGIC settlement team and, where the plaintiff was represented, a co-operative approach between the settlement team and the lawyers rather than the rule change itself.

In 1994/5 SGIC settled 3800 claims and did not instruct solicitors to act in 2556 (that is, 67 per cent) of them. No comparative data in other years for these figures is available, but such a high percentage is further indication of the fact that many of these claims were settled before proceedings were filed.¹⁰ The number of claims where court proceedings have been commenced has steadily declined. In 1995 only one quarter the number of cases were commenced as in

1989. Over the same period all types of accident, and particularly casualty accidents, have shown only a slight decline. A comparison of casualty accidents and actions commenced in court shows that the actions commenced have reduced disproportionately. There may be a time lag of up to three years between the accident and the commencement of the claim in court,¹¹ but that does not explain the fall in the latter. It is clear that the SGIC settlement team has been highly successful in settling claims before a case has been commenced in court.

Lawyers from firms specialising in plaintiff and defendant personal injury work and other lawyers who work in the field have been interviewed about the effect of this initiative.

The unanimous view was that the establishment by SGIC of a settlement conference team to deal with the backlog of cases in the District Court, which aggressively attempted to settle cases before proceedings were issued, was highly successful. The team is regarded as experienced and practical and the offers for damages realistic. The settlement team takes its own legal advice in many cases and is willing on occasions to offer more than the amount recommended by its own solicitors, demonstrating a pragmatic approach which holds that it is cheaper in the long run to pay a little more to settle a claim before proceedings are issued than to pay a lesser amount later which may incur more in costs than the 'saving'. The perception from both plaintiff and defendant lawyers is that they settle a 'huge' number of claims before legal proceedings are commenced.

Plaintiff lawyers expressed the view that this was much better for their clients. A realistic pre-claim settlement saves stress and delay. It is obvious that it also saves costs to both sides. Some thought the offers for the plaintiffs' costs were adequate but some thought that they were rather low.

There are some litigants who will only be satisfied with a court determined result. They are the exception.

The 90 day rule reinforced and institutionalised this change in approach. 'The culture already had evolved ➤

'The unanimous view was that the establishment by SGIC of a settlement conference team to deal with the backlog of cases in the District Court, which aggressively attempted to settle cases before proceedings were issued, was highly successful.'



'The substantial statute-imposed reduction in general damages for personal injuries arising from motor vehicle accidents in 1987 has reduced the economic attraction of litigating and has assisted SGIC in being apparently generous relative to the reduced entitlement.'

➤ that way.' A level of trust and respect has built up between the SGIC settlement team and the plaintiff lawyers I interviewed. They saw this as the reason for the success of the new approach and the effect of the rule change as largely coincidental. The point was made that the rule does militate against cynical plaintiff lawyers who otherwise might issue a claim before negotiating just to build up costs. However, some said the rule is not rigorously enforced. Some plaintiffs apparently have been allowed their costs even though they were in breach of the rule. This is not seen as a bad thing (by either side) but was mentioned to make the point that it is not the rule change that has caused the early settlements — it was the establishment by SGIC of a credible, competent settlement team making realistic offers and the acceptance by the legal profession of this cultural shift.

This is reinforced by the reported experience with other insurers who do not make any realistic offer in response to the pre-action notice but continue 'to play hard ball and die in the trenches over every claim'.¹² This indicates that the rule change by itself may not have achieved the success of settling so many cases before proceedings were filed in a court. However, in conjunction with a proactive approach by SGIC to settle claims at the earliest possible time, early settlements have been achieved. This has substantially reduced the cost burden to the litigants. On SGIC's figures the total legal costs paid in 1994/5 were \$17.5 million less than the total costs paid in 1991/2.¹³ This does not include plaintiffs' solicitor-client costs, so it would significantly understate the saving. If SGIC has been relatively generous with its settlement offers, that may have had the effect of some money which might otherwise have been spent on medico-legal costs being spent on the plaintiffs' damages. It is not within the scope of this paper to assess the implications of that but I suggest that in the context of the substantial reduction to general damages imposed by statute there is no social harm if this small transfer has occurred.

The substantial statute-imposed reduction in general damages for personal injuries arising from motor vehicle accidents in 1987 has reduced the economic attraction of litigating

and has assisted SGIC in being apparently generous relative to the reduced entitlement. This may have been a factor in the apparent success of the 90 day pre-action notice. Even allowing for this, the initiative has been a significant success in reducing costs to the litigants. The success was a result of the cultural change in approach by SGIC, not just the rule change.

Court issued final notices available on the internet

This procedure was introduced on 5 July 1999. It was part of a wider prescription to formalise the common law position that before a party can claim costs, s/he should give a final warning that proceedings are about to be filed at court. The new rule provides:

20A(1) Subject to any order of the Court, the plaintiff is not entitled to the costs for the filing of the claim unless notice in writing of the intended claim was given to the intended defendant not less than 21 days before the filing of the claim, or where sub-rule (2) applies in accordance with that rule, by any means authorised in these rules for service of a claim.

(2) In an action for damages for personal injuries notice of the claim must be given at least 90 days before the filing of the claim and must be given to the defendant's insurer if the identity of the insurer is known to the intended plaintiff. Such notice must include notice of any intended claim for past and future economic loss and be supported by documents including medical reports setting out the nature and extent of the plaintiff's injuries and residual disabilities as known to the plaintiff at the time of the giving of the notice.

(3) Notice of an intended claim may be given in accordance with Form 1A which notice must be filed with the Court and must bear the Court's seal. A plaintiff who is successful in a claim is entitled to recover from the defendant any filing fee for this notice.

By providing a form of notice, the court can put its own message across — which for these purposes is to encourage mediation and to provide expertise to narrow disputes over technical issues before the costs escalate. The mediation is provided on a pro bono basis by LEADR-accredited mediators. Most of these are lawyers providing their time without charge. For them it is a ➤



➤ community service and an opportunity to hone their skills. The experts are from a panel of court experts used by the court for its own advice at all stages of the litigation process.

The form is available over the internet and at court offices, where court staff obtain it via the website. In the first seven months the court issued 2202 forms. Fifty

three pro bono mediations have been arranged. The rate of use is increasing each month, January excepted (this exception is presumed to be due to the holiday break).

At the moment the Court is working on a proposal to further develop the final notice to encourage uncontested debt claims to be dealt with prior to a court

action being commenced to save both the creditor and the debtor expenses, and to use the threat of the credit referencing effect of a judgment as an incentive to encourage adherence to a payment agreement.

What now follows is the court form and some explanatory literature designed for court users.

FORM 1A

FINAL NOTICE OF CLAIM
MAGISTRATES COURT OF SOUTH
AUSTRALIA (CIVIL DIVISION)

FROM: (Plaintiff)

[address, phone, fax nos]

TO :

[address, phone, fax nos]

The Plaintiff intends to file a claim in this Court against you for the sum of \$

being for: (briefly describe the basis of the claim)

This notice provides an opportunity for you both to voluntarily negotiate a resolution without further involvement by the Court. This may save you costs, time and court appearances.

Details of your options, what they mean and how they work are on the reverse side of this Notice.

If you are not able to reach a resolution within 21 days of service of this notice which is acceptable to you and the plaintiff, the plaintiff may file a Claim against you at the Court.

IGNORING THIS NOTICE

If you ignore this notice the plaintiff may file a claim against you incurring court and other costs which you may have to pay if you lose the case.

OPTIONS FOR PAYMENT IF YOU OWE THE FULL AMOUNT

Pay the full amount claimed to the plaintiff (do not send money to Court). If you cannot afford to pay in full try to arrange instalment payments with the plaintiff. Keep a record of payments made.

Negotiate more time to pay in full with the plaintiff.

The plaintiff is not entitled to debt collecting costs unless you agreed to pay them in your credit or other agreement with the plaintiff.

OPTIONS FOR SETTLEMENT

If the claim is in dispute, you can negotiate directly with the plaintiff to reach an agreement or, if the plaintiff agrees, you can use the free court mediation service (see 'Mediation') and/or a court appointed expert (see 'Experts').

If you owe some of the money you could pay that to reduce the amount in dispute.

MEDIATION

Court mediation is free and is an alternative way of resolving a dispute other than by court processes leading to a court trial. Mediation can only take place if both parties agree. You can choose either court mediation or other mediation services.

EXPERTS

In many areas an independent court expert can provide an opinion on technical issues.

For information about mediation or court experts if you are in the Adelaide Metropolitan Area phone 8204 0680 or in the country call your nearest court registry.

For general information or if you do not understand this notice phone the Call Centre on 8204 2444 or country residents please call your nearest court registry:

Berri (08) 8595 2060

Coober Pedy	(08) 8672 5601
Mt Gambier	(08) 8735 1060
Naracoorte	(08) 8762 2174
Port Lincoln	(08) 8688 3060
Tanunda	(08) 8563 2026
Ceduna	(08) 8625 2520
Kadina	(08) 8821 2626
Murray Bridge	(08) 8535 6060
Whyalla	(08) 8648 8120

HAVE YOU COMPLIED WITH RULE 20A ?

Pursuant to Rule 20A of the Magistrates Court (Civil) Rules a plaintiff should give a defendant 21 days notice, in writing, of an intended claim. Otherwise a plaintiff risks being unable to recover their filing fee associated with a subsequent claim lodged with the Court.

The pre-lodgement system allows for individuals, businesses or organisations to issue a 'Final Notice of Claim', which complies with Rule 20A, prior to issuing a formal claim.

The system aims to encourage parties to resolve their dispute without needing to resort to the formal legal system.

This notice can be purchased for \$10.00 either via the internet at www.claims.courts.sa.gov.au or over the counter at any Magistrates Court Registry.

The 'Final Notice of Claim' provides the potential defendant with a number of alternative courses of action:

- to pay the plaintiff the money they seek,
- to negotiate a settlement with the plaintiff, which may include part payments
- to seek mediation, or
- to ignore the Notice and run the risk that the plaintiff lodge a formal claim with the Court.





A 'Final Notice of Claim' may result in the dispute being resolved without the need for a formal claim to be lodged with the Court.

Please Note:

If you require a large quantity of Form 1As to be processed by a Registry you should contact your nearest Registry for details.

PRE-LODGEMENT SYSTEM

WHAT IS THE PRE-LODGEMENT SYSTEM?

The Court Process Review recommended that a pre-lodgement system be implemented in the Civil Division of the Magistrates Court of South Australia.

The pre-lodgement system allows for individuals or organisations to issue a 'Final Notice of Claim' prior to issuing a formal claim.

This notice can be purchased for \$10.00 either via the internet at www.claims.courts.sa.gov.au or over the counter at Magistrates Court Registries.

The system aims to encourage parties to resolve their dispute without needing to resort to the formal legal system.

The 'Final Notice of Claim' provides the potential defendant with a number of alternative courses of action:

- to pay the plaintiff the money they seek,
- to negotiate a settlement with the plaintiff, which may include part payments
- to seek mediation, or
- to ignore the Notice and run the risk that the plaintiff lodge a formal claim with the Court.

HOW DOES THE SYSTEM WORK ?

Individuals, companies, organisations, law firms, government agencies and anyone who can access the internet is able to visit the pre-lodgement website.

The address of the pre-lodgement website is:

www.claims.courts.sa.gov.au

Once access to the website is gained, the user will be asked to log on. This requires the user to create a log on name and password. Thus frequent users, such as law firms or government agencies etc, will use the same

user name and password [each time they access the system].

Once the user enters a valid user name and password, they will then proceed to the next screen.

The next screen requires the user to enter their credit card details for payment of generating the Notice. There are two checks which are conducted at this stage. The first internal check makes sure that the user has entered the correct amount of numbers for the credit card and also checks the expiry date. If an error is made the transaction will not proceed and the user will be notified that an error has occurred and to check the details they entered and resubmit their details. The second external check ensures that the credit card is valid, ie it has not been reported as stolen. Upon authorisation the user will see another screen which informs them that their transaction has been successful.

Brief instructions are then given as to how to generate their claim form. The user then completes the details required and clicks on 'Generate Notice'. The Notice is then displayed. The user then prints the Notice. The transaction is complete.

Any queries regarding the use of the web site should be directed to:
claims@courts.sa.gov.au

WHY USE THE PRE-LODGEMENT SYSTEM?

The pre-lodgement system aims to encourage individuals, businesses and organisations to resolve disputes without pursuing formal dispute resolution processes within the judicial system.

The pre-lodgement system allows for a more cost efficient means of resolving disputes. It is perceived that individuals, businesses and organisations who would normally not pursue formal civil claims because of the costs will use the pre-lodgement system, thus providing access to justice for the whole community.

To ensure against the loss of costs, anyone who wishes to sue must first issue either the Final Notice of Claim (Form 1A) or their own version of it. This has now been formalised in the *Magistrates Court (Civil) Rules* (Rule 20A).

WHEN SHOULD YOU USE THE PRE-LODGEMENT SYSTEM?

If dispute has arisen, an individual, business or organisation can issue a 'Final Notice of Claim' on the other disputing party in an attempt to resolve the dispute without lodging a formal claim in the Magistrates Court.

The plaintiff can either issue the Notice themselves via the internet web site or they can go to any Magistrates Court Registry and obtain a Notice over the counter. The Court does not serve the Notice. The plaintiff must serve the Notice themselves.

The potential defendant then has 21 days in which to respond to the Notice. If they do not respond within the 21 days then the plaintiff can issue formal proceedings within the Court.

THE ADVANTAGES OF THE PRE-LODGEMENT SYSTEM

- Inexpensive means of resolving disputes.
- Allows access to justice — the cost barrier to justice is removed.
- Promotes Alternative Dispute Resolution processes.
- Allows parties to resolve disputes themselves rather than resorting to the formal legal system.
- Provides justice to the entire South Australian community.
- The use of the internet allows for broad access.
- Innovative system that takes advantage of modern technology.
- Simple system to use.
- The pre-lodgement system is available 24 hours a day 7 days a week.

THE DISADVANTAGES OF THE PRE-LODGEMENT SYSTEM

- It is not a formal claim within the judicial system.
- The potential defendant may ignore the Notice requiring the plaintiff to issue formal proceedings within the Court.

BULK PROCESSING OF 'FINAL NOTICE OF CLAIM' FORMS

If a client requires a large quantity of Final Notice of Claims (Form 1As) they ➤



➤ need to contact their nearest Registry and obtain a copy of the pre-lodgement Notice details form. They then need to complete this Form for each 'Final Notice of Claim' that they require.

Once they have completed the details form these can be delivered to their nearest Registry along with a cheque for the correct amount.

The Final Notice of Claim forms will then be processed in the Registry. The client will then be informed when they are ready for collection.

The client is then responsible for service of the 'Final Notice of Claim'.

PRE-LODGE MENT MEDIATION

If both parties wish to have their dispute

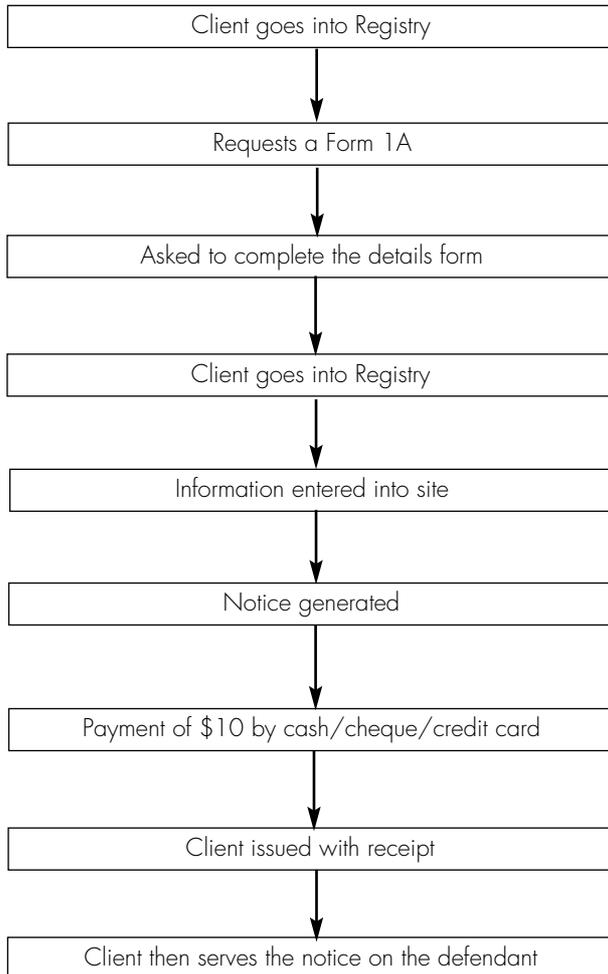
mediated they can do so through the Magistrates Court.

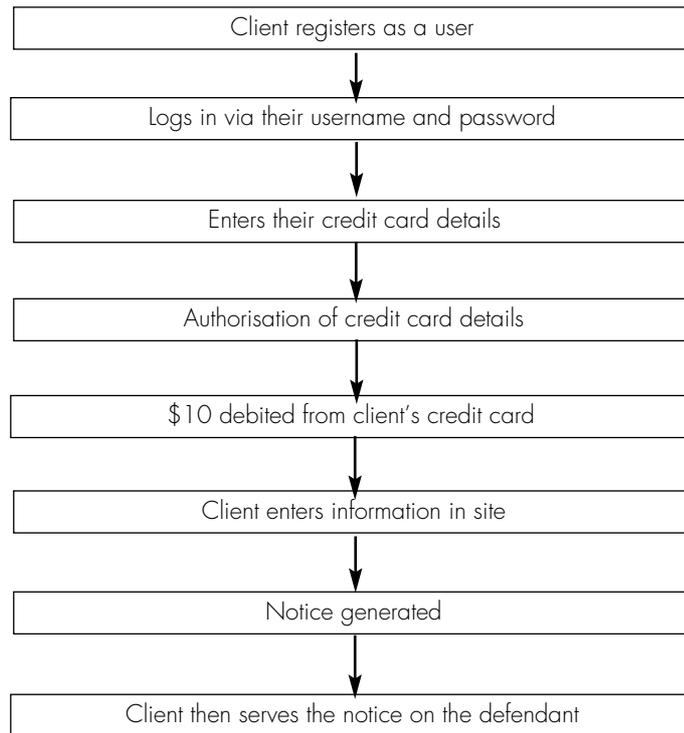
Mediation enquires can be made by telephone, facsimile, post or via email to:

Listings
 Adelaide Magistrates Court Civil Registry
 Telephone: 8204 0680
 Facsimile: 8204 0670
 OR
 Manager of Mediation
 Adelaide Magistrates Court Civil Registry
 GPO Box 2618
 ADELAIDE
 SA 5001
 OR
 mediation@courts.sa.gov.au

Pre-lodgement system flow chart

At the Registry



**Via the internet****We are not alone**

Last year I was lucky enough to undertake a SA Law Foundation fellowship study tour to investigate lower court systems in Europe. In Germany they have amended the code of civil procedure, the *Zivilprozessordnung* or ZPO (§ 15a), to allow states to require a form of mediation as a precondition to commencing a small claim.¹⁴ This can be provided by a state established conciliation office or through trade associations. As yet most of the states have not adopted the procedure, but it is indicative of sophisticated legal systems recognising that there are practical reasons to encourage alternatives to court determination of disputes.

In Germany the courts and lawyers have a relatively tight monopoly on dispute resolution. In small claims there are simplified procedures, but lawyers are still allowed to represent the parties. The large numbers of such claims in courts is too expensive for both the parties and the courts. This is the background to the German proposal to make an attempt at

mediation in small claims compulsory. I have noted already that I disagree with this in principle because it is inconsistent with the primary role of lower courts to enforce obligations and determine the extent of them. The better policy for small claims in Australia is to exclude lawyers so that the determination of such claims is not too expensive. This in turn requires courts to adopt a more inquisitorial process.

The 90 day pre-action notice in South Australian personal injury claims is an example of how effective pre-action settlement schemes can be. Achieving the right balance in any system between resolving cases by ADR and having them determined in courts is influenced by cost considerations, the availability of legal advice and other factors outside the scope of this paper. There are sound philosophical reasons for encouraging parties to retain the control of the resolution of their disputes. Court prescribed pre-lodgement notices can have an important role in this. However, people can only achieve fair and just ➤



Table 1: SGIC legal costs and total payments

	1986/7	1987/8	1988/9	1989/90	1990/1
Plaintiff legal cost	1,1698,241	12,216,857	15,266,649	18,461,165	19,613,332
Defendant legal cost	7,598,037	9,544,422	11,898,588	14,498,705	15,809,360
Total legal cost	19,296,278	21,761,279	27,165,237	32,959,870	35,422,692
Total payments	162,761,688	158,928,450	176,376,690	185,501,305	189,992,135
Defendant cost per cent of total payout	4.66	6	6.75	7.82	8.32
Total cost per cent of total payout	11.86	13.69	15.4	17.77	18.64
	1991/2	1992/3	1993/4	1994/5	
Plaintiff legal cost	22,805,668	18,501,732	13,409,545	11,988,848	
Defendant legal cost	17,738,005	14,337,290	10,412,612	10,965,944	
Total legal cost	40,543,673	32,839,022	23,822,157	22,954,792	
Total payments	201,091,998	185,883,681	143,274,316	159,576,679	
Defendant cost per cent of total payout	8.82	7.71	7.27	6.87	
Total cost per cent of total payout	20.16	17.67	16.62	14.38	

Table 2: SGIC average time CTP claim file open for claims closed during period

	Average no of months claim file open
Closed 89/90	28.15
Closed 90/91	31.04
Closed 91/92	31.04
Closed 92/93	31.18
Closed 93/94	26.59
Closed 94/95	25.12

Table 3: SGIC number of new CTP actions per year

Year	Actions commenced
1989/0	3204
1990/1	2931
1991/2	2284
1992/3	1709
1993/4	1256
1994/5(projected)	815

Table 4: SGIC proportion of costs to CTP payout

	1991/2	1994/5
Assessors, investigators and police reports	2,135,464	2,317,894
Medico-legal costs	44,153,902	26,174,603
Payment to claimants	154,802,632	131,084,182

TABLE 5: Vehicle accidents in SA

	fatal accidents	casualty accidents	all accidents
1986	259	9244	43,440
1987	230	8619	42,240
1988	206	7881	37,373
1989	201	7815	40,067
1990	186	7606	39,844
1991	166	6506	35,961
1992	142	6258	35,756
1993	191	6467	37,295
1994	145	6410	38,833

NB: No figures are available for all accidents in 1993; the figure used is an average of 1992/4. In 1988 the damages reporting limit was raised from \$300 to \$600. Figures are for accidents, not actual casualties or injured people. Source: SA Dept Road Transport, Office of Road Safety.

**TABLE 6: Casualty accidents compared to claims commenced with SGIC**

	casualty accidents	claims commenced
1986	9244	
1987	8619	
1988	7881	
1989	7815	
1990	7606	3204
1991	6506	2931
1992	6258	2284
1993	6467	1709
1994	6410	1256
1995		815

NB casualty accidents are per calendar year, claims commenced per financial year.

➤ control over disputes where the reasonable and the weak know that they can afford to go to court and win a just cause if attempts at ADR fail. ●

Andrew Cannon, is the Supervising Magistrate, Magistrates Court (Civil), South Australia, and can be contacted at <Andrew.Cannon@courts.sa.gov.au>.

Endnotes

1. All these figures are from internal Courts Administration Authority (SA) data.

2. 'A smooth dark mineral, esp. A form of jasper, used for testing the quality of gold and silver alloys by rubbing it with the alloy and noting the colour of the mark made; ... A thing which serves to test the genuineness or value of anything; a test, a criterion'; Lesley Brown (ed), *The New Shorter English Dictionary* Clarendon Press, Oxford 1993.

3. Lawyers Engaged in Alternative Dispute Resolution and the Best, Worst and Most Likely Alternative To a Negotiated Agreement.

4. Resnik J, 'Changing Practices, Changing Rules: Judicial and Congressional Rulemaking on Civil Juries, Civil Justice, and Civil Judging' *Alabama Law Review* Vol 49: 1 (20 November 1997) 133.

5. Winter J, 'The 90 day rule' (24 February 1994), an unpublished paper delivered to lawyers as part of the Law Society of SA CLE program.

6. Rule 106(8). The lawyer may still be able to charge the client — for example, if

instructions were given at the end of the limitation period and it was necessary to file without notice to avoid the claim being statute barred. In the higher courts the penalty is all costs.

7. After 28 October 1993 in the Supreme and District Courts (SA).

8. I have not researched the reason for the cost increase leading up to the peak in 1991/2. The District Court introduced case flow management in 1990 which was too late to have contributed to those cost increases.

9. Section 35a of the *Wrongs Act 1936* (SA).

10. When a claimant files proceedings it is SGIC practice to instruct solicitors.

11. There is a limitation period of three years in commencing these claims. This can be extended, but the overwhelming majority are commenced within the limitation period.

12. Quoting a plaintiff lawyer. This view is supported by the fact that data collected for general claims in 1996 showed three times as many non-SGIC personal injury claims settled by the end of the directions hearing. The much lower proportion of SGIC claims that settled at this stage is consistent with SGIC having settled many before proceedings issued.

13. Allowing for inflation the real saving is in fact higher.

14. Small claims in Germany involve an amount of controversy of not more than 1500DM. A Deutschmark is worth slightly less than the Australian dollar.