

Proper Use of the Inactive Case List can save time, money and claims

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The Masters of the District Court have, over the past two years, presented several papers at Law Society Seminars on the topic of the Inactive Case List and the Moratorium of Steps procedure under the Rules – see *“Inactive Actions: The Consequences if actions are placed in the Inactive cases list and are not removed, Establishment of “Special Reasons” and the Moratorium of Steps Procedure”*, Master Norman, Law Society Forum 15 February, 2018 and *“Moratorium Upon Steps”*, Master Blumberg, Port Lincoln Country Seminar, 19 July, 2019.

This is because the Masters place importance on the use of this procedure as a useful tool in managing their lists efficiently. If cases are appropriately in the Inactive Case List, and only come out when they become truly active, then the Court's time is not wasted by adjourning inactive matters numerous times when they come up in the normal lists.

Notwithstanding the two papers presented recently, the Masters have advised that it is still the case that matters which should be in the Inactive Case List are still in the normal lists and that the profession should use the Inactive Case List more extensively.

The current Rule that governs the Inactive Case List and the Moratorium on Steps is R.123. There are two ways in which a matter can be placed into the Inactive Case List.

The first is under R. 123(1) where, in effect, the Court notifies the plaintiff that the Court will place the matter in the Inactive Case List if three months after the time the action should have been served no application for extending the time for service has been made, no defendant has filed an address for service and the plaintiff has not applied for judgment in default of the filing of a defence.

The second is under R. 123(5) where the plaintiff can, upon filing the originating process, nominate that the case be entered into the Inactive Case List. Where this occurs the plaintiff must serve notice (in the prescribed form) to the defendant



informing the defendant that the case is to be placed in the Inactive Case List and notifying the defendant of their right to seek to have the matter proceed.

It is the use of the procedures under R. 123(5) by plaintiffs (rather than have the Court take the steps under R. 123(1) or for there to be adjournment after adjournment) that the Masters wish to promote. Master Blumberg's paper (referred to above) states that “[i]nfant claims, unsettled medical conditions, actions requiring further negotiation, are all types of proceedings amendable to the procedure”.

The sting in the tail where cases are entered by the Court onto the Inactive Case List is contained in R. 123(4) which provides that, subject to R. 123(5), if an action remains on the list for inactive cases two months after being entered onto the list, **the action is automatically dismissed for want of prosecution.**

Further, R. 123(7) provides that there must be **special reasons** for the Court to reinstate the action if it has been dismissed for want of prosecution. Clearly, any such application for reinstatement will be difficult and costly and should be avoided wherever possible: if a matter is placed into the Inactive Case List by the Court then urgent action to avoid a dismissal for want of prosecution is imperative. Should a plaintiff elect

to use the process under R. 123(5) though the action will not be liable to be dismissed under R. 123(4).

Once a plaintiff is ready to proceed or where a defendant wants the matter to progress, then any party may apply to have the matter removed from the Inactive Case List having given all parties 14 days written notice.

The new Rules will contain similar provisions to those contained in Rule 123 so these issues will be just as important after the new Rules come into effect. Rule 30 is the current new Rule dealing with these issues however the numbering in the final version of the Rules may change.

There are also sound reasons from a Risk Management point of view for these procedures to be widely used.

This is because if proceedings are issued early and within time there should be fewer cases where time limits are missed. The significant tightening up of the instances where extensions of time are granted (see *Ireland v Wightman* [2014] SASFC 52) means that the days of holding off the issue of proceedings because you are negotiating with the defendant are over. The proper use of the Inactive List / Moratorium on Steps procedures can keep costs down as well as avoiding unnecessary adjournments and the ire of the Court.