



LOCAL COURT PRACTICE NOTE NO. 1 OF 2015

ISSUED: 25 September 2015

COMMENCES: 1 October 2015

Local Court Civil General Division – Online Court Protocol

Part 1 Commencement and Application of Practice Note

- 1.1 This Practice Note commences on 1 October 2015.
- 1.2 This Practice Note is issued for the purposes of a pilot program for Local Court (Civil Jurisdiction) General Division matters listed for Defence Callover at the John Maddison Tower, Sydney. OLC is available for Defence Callover matters where the first appearance is on or after 1 October 2015. This Practice Note is to be read in conjunction with Local Court Practice Note Civ 1. OLC is not available to self-represented litigants or non-parties.

Part 2 Definitions

- 2.1 In this Practice Note:

'CPA' means *Civil Procedure Act 2005*.

'ETA' means *Electronic Transactions Act 2000*.

'UCPR' means the *Uniform Procedure Rules 2005*.

'registered user' means a person who is a registered user of the ORW.

'delegate' means managing lawyers or employed support staff who are registered as delegates by the practitioner on the record via the ORW.

'ORW' means Online Registry Website.

'OLC' means Online Court.

'callover' means Defence Callover in the Local Court (Civil Jurisdiction) General Division.

'OCR' means Online Court Record.

'practitioner' means legal practitioner.

Part 3 Purpose

- 3.1 The object of this Practice Note is to minimise the cost and inconvenience of in-person court appearances by practitioners by enabling them to make online requests without the need to wait for a callover date.

Part 4 Conduct in an Online Court

- 4.1 The OLC is a virtual courtroom, authorised by Schedule 1 to the *Electronic Transaction (ECM Courts) Order 2005*. It may only be used for issues requiring consideration and determination by a registrar.
- 4.2 OLC is not to be used for communications solely between the practitioners representing the parties.
- 4.3 Practitioners/Delegates should conduct themselves and use language in the OLC as they would during an in-person court appearance.
- 4.4 A registrar may, from time to time, give instructions as to:
- a) the acceptable length of reasons for request and messages in an OLC; and
 - b) the time and date by which responses to requests and messages must be made.
- 4.5 If a request/consent or counter request is submitted to the OLC by a delegate for a practitioner, the practitioner on the record is taken to have affirmed to the Court that he or she has actual knowledge of the contents of the request/consent or counter request.
- 4.6 Undertakings given in an OLC by a practitioner or a delegate are as binding as if the undertaking were given in an in-person courtroom appearance.
- 4.7 Practitioners or delegates will be notified by email when they have been sent a request/consent or counter request.

Part 5 Initiating an Online Court

- 5.1 Registered users of the ORW who are also practitioners on the record for cases in the General Division Defence Callover list for John Maddison Tower, may choose via the ORW to have those cases dealt with in the OLC.
- 5.2 Designated managing practitioners or employed support staff registered as delegates by the practitioner on the record via the ORW may also choose cases to be dealt with in the OLC on behalf of the practitioner.
- 5.3 When a request to participate in the OLC is made, an automatic email will be sent to the practitioner on the record for the opposing party, requesting agreement for the selected case to be dealt with in OLC.
- 5.4 Cases can only proceed to be dealt with in the OLC when practitioners on the record (or their delegates) for ALL parties have agreed for the matter to proceed online.

Part 6 What may be dealt with in Online Court

- 6.1 OLC may be used for interlocutory or procedural matters that may arise during a General Division Defence Callover. Matters in the OLC will be conducted in accordance with Local Court Practice Note Civ 1 (and s 71 of CPA).
- 6.2 In the OLC, practitioners (or delegates) may request the following:
- a) Adjournment of the callover;
 - b) Interlocutory orders pursuant to Part 6 of CPA;
 - c) Allocation of trial date and review date; and
 - d) Referral of matters to directions hearing before a magistrate if parties are seeking leave to call expert witnesses.

Part 7 How will matters be dealt with in Online Court

- 7.1 All online requests (or counter requests) must be supported with reasons for the request. Each request submitted will be automatically forwarded to the practitioners for the opposing party(s) who may then consent or counter the initial request.

A Initial request

- 7.2 In the OLC, the practitioner or delegate for any party may make an online request for interlocutory orders at any time up to 36 hours prior to the date and time the matter is listed for in-person callover. The deadline for submitting a request in OLC will be 9.30pm on Monday. It will not be possible to make a request after this time and the matter will proceed to in-person callover as per its original listing.

B Counter request or consent

- 7.3 Counter requests will be automatically forwarded to the practitioners for the opposing party(s) who may then consent or counter the request. All counter requests must be supported with reasons for the counter request.
- 7.4 A counter request or consent to a request should be responded to by the practitioner or delegate of the opposing party(s) no less than 24 hours before the date and time the matter is listed for in-person callover. The deadline for submitting a consent or counter request will be 9.30 am Tuesday.
- 7.5 An automatic email will be forwarded to the opposing practitioner or their delegate each time a consent or counter request is submitted.

Part 8 Registrar orders

- 8.1 When the registrar makes an order in the OLC an automatic email will be forwarded to all practitioners (or delegates).
- 8.2 If a counter request or consent is not received by the required time, the registrar may determine whether the parties are required to attend the in-person callover and make orders accordingly.

Part 9 Messaging

- 9.1 At any time during the OLC any practitioner/delegate may send a message to the registrar regarding any case management issues between the parties. In addition, the registrar may also choose to send a message to the parties at any time in OLC if it appears there are case management issues requiring resolution.
- 9.2 Messages sent by the practitioners/delegates or the registrar will be visible to all practitioners/delegates for opposing parties.

Part 10 Costs

- 10.1 On occasions the registrar may determine that an in-person callover appearance is required because of a lack of response to a request/counter request made in the OLC.
- 10.2 In this event, the registrar may, at the in-person callover, consider any application for costs from parties to cover their costs of appearance at the in-person callover and/or costs of preparation of the OLC request.
- 10.3 In determining the costs application the registrar may take into account any failure of a practitioner to respond to a request (s 56(5) CPA). Whether the in-person court appearance could have been avoided if a practitioner had responded to an OLC request and whether there is a reasonable explanation for not responding are matters to be taken into account on the question of costs.

Part 11 Consent orders

- 11.1 As far as practicable, the practitioners representing the parties will have communicated between themselves and come to an agreed position as to the orders sought prior to submitting a request in the OLC. The opposing practitioners/delegates will then be in a position to quickly deal with the request by consenting to what is proposed.
- 11.2 Any terms agreed between the parties should be included as orders sought in the request.

Part 12 Terminating an Online Court request

- 12.1 An OLC request may be terminated at any time by the registrar and the proceedings listed for resolution at an in-person court appearance before a registrar or a directions hearing before a magistrate.
- 12.2 The termination of an OLC request will not prevent the lodgement of a fresh request by practitioners or their delegates.

Part 13 Documents

- 13.1 Documents can be attached as part of a request or attached to a message. Any attached documents will be viewable by the opposing practitioner/delegate and the registrar.
- 13.2 Where practitioners/delegates require documents to be formally filed, they should do so via the ORW and not via the OLC.

Part 14 Obtaining copy of Online Court Record

- 14.1 All activity in the OLC including requests, consents, counter requests and messages will be recorded in the OCR and will be visible to all practitioners/delegates and the registrar.
- 14.2 Any person may make a request to the registrar for a printed copy of the OCR. The printed copy of the OCR may be provided, subject to any suppression order or other restrictions that might apply to the proceedings.

Judge Graeme Henson
Chief Magistrate

