



Local Court of New South Wales

Practice Note Civ 1

**Issued Pursuant to section 15 of the *Civil Procedure Act 2005 (CPA)* and pursuant to section 27
Local Court Act 2007.**

Commenced: 23 March 2011 Reissued: 7 January 2013

Amended: 4 March 2013, 26 June 2017, 17 July 2017 and 15 March 2019

CONTENTS

CASE MANAGEMENT OF CIVIL PROCEEDINGS IN THE LOCAL COURT 2	28 Access to Subpoenaed Documents.....9
1. Commencement 2	29 Applications for disclosure of documents 10
2. Application 2	PART E – Expert Evidence 11
3. Introduction 2	30 Leave to adduce expert evidence 11
PART A – General Provisions 3	31 General Division – Single Expert 11
4. Directions..... 3	32 General Division – Joint Experts’ Report 11
5. General adjournments 3	33 Small Claims Division – Single Expert 11
6. Representation 3	34 Tendering Expert Reports at the Hearing 12
7. Dismissal 3	PART F – Costs 12
8. Alternative Dispute Resolution 3	35 Proportionality of costs..... 12
9. Transfer between Small Claims Division and General Division 3	36 Costs at the end of the trial 13
10. Change of Venue 3	37 Guideline Amounts 13
PART B – General Division Case Management 4	PART G – Maximum Costs Orders in the General Division 14
11. General Principle 4	38 Claims of \$20,000 or less. 14
12. Standard Directions 4	39 All Claims 14
13. First call-over 4	PART H – Pre-Judgment Interest 15
14. Second call-over/Directions hearing 5	PART I – Online Court Protocol 15
15. Review 5	41 Purpose of this Part 15
16. Notices of Motion 6	42 Conduct in an Online Court..... 15
17. Trial 6	43 Commencement of an Online Court 16
18. Vacating the Trial 6	44 What may be dealt with in Online Court. 16
19. Appearance by telephone or audio-visual link (AVL) at the trial 6	45 How will matters be dealt with in Online Court 16
PART C – Small Claims Division Case Management ... 7	46 Registrar Orders..... 16
20. General Principles 7	47 Messaging 17
21. Pre-Trial Review 7	48 Costs in Online Court..... 17
22. Notices of motion..... 7	49 Consent Orders..... 17
23. Vacating a trial date..... 7	50 Terminating an Online Court Request 17
24. Trial..... 8	51 Documents 17
25. Appearance by telephone or audio-visual link (AVL) at the trial 8	52 Obtaining copy of Online Court Record 17
PART D – Subpoenas And Applications For Disclosure Of Documents..... 9	Amendment History..... 18
26 Issuing subpoena 9	Annexure A..... 19
27 Seeking leave to issue a subpoena 9	Annexure B..... 21
	Annexure C 22
	Annexure D 24
	Annexure E..... 25

CASE MANAGEMENT OF CIVIL PROCEEDINGS IN THE LOCAL COURT

1. Commencement

1.1. This practice note, as amended, commences on 15 March 2019.

2. Application

2.1. This practice note applies to civil proceedings in the Local Court.

3. Introduction

3.1. The purpose of this practice note is to update Practice Note Civ 1 dealing with matters relevant to the management of civil proceedings.

3.2. The following abbreviations are used in this practice note:

- CPA means the Civil Procedure Act 2005;
- ADR means alternative dispute resolution (including mediation under Part 4 of the CPA and arbitration under Part 5 of the CPA)
- LCR means the Local Court Rules 2009
- UPCR means the Uniform Civil Procedure Rules 2005
- OCR means Online Court Record
- OLC means Online Court
- ORW means Online Registry Website

3.3. This practice note describes the practice of the Local Court in managing civil proceedings so as to achieve the just, quick and cheap resolution of the real issues in the proceedings: s 56(1) CPA.

3.4. The court's time standards aim to finalise 90% of civil proceedings within 6 months of commencement and 100% within 12 months. Parties must plan to meet these time standards.

3.5. The court by this practice note seeks to give effect to the overriding purpose of the CPA and to the finalisation of all civil proceedings within the court's time standards.

3.6. A party to civil proceedings is under a duty to assist the court to further the overriding purpose and, to that effect, to participate in the processes of the court and to comply with the directions of the court: s 56(3) CPA.

3.7. This practice note is structured as follows:

- Part A – General Division
- Part B – General Division case management
- Part C – Small Claims Division case management
- Part D – Subpoenas and applications for disclosure of documents
- Part E – Expert evidence
- Part F – Costs
- Part G – Maximum Costs orders in General Division (*Note this section only relates to proceedings commenced before 28 February 2019*)
- Part H – Pre-judgment interest
- Part I – Online Court Protocol.

PART A – General Provisions

4. Directions

- 4.1. The Court may give such directions as it thinks fit for the speedy determination of the real issues between the parties to the proceedings.

5. General adjournments

- 5.1. No proceedings are ever stood over generally: see s66(1) CPA.

6. Representation

- 6.1. Where a party is legally represented, the legal representative (or their agent) must appear on behalf of the party at a Pre-Trial Review, Call-over or Directions hearing and Review.
- 6.2. The legal representative must have sufficient instructions to make and consider offers of settlement and to enable the Court to make all appropriate orders and directions.
- 6.3. If proceedings are adjourned due to legal representative being insufficiently instructed a costs order may be made against the party.

7. Dismissal

- 7.1. If within 9 months after a statement of claim is filed:
- A defence or cross claim is not filed, or
 - A default judgment is not entered, or
 - The proceedings are not otherwise disposed of,
- The proceedings will on the Court's own motion and order be dismissed: UCPR 12.9(2).
- 7.2. The Court will not dismiss proceedings under UCPR 12.9 if there are any notices of motion or other applications in the proceedings that have yet to be determined: UCPR 12.9(4).

8. Alternative Dispute Resolution

- 8.1. The court may at any stage refer proceedings to ADR including on the first date the proceedings are listed before the court.
- 8.2. The court may refer proceedings to mediation with or without the consent of the parties
- 8.3. The court will only refer proceedings to arbitration where there are no complex issues of fact or law and the hearing is estimated to take 3 hours or less
- 8.4. The court will not refer proceedings in the Small Claims Division or proceedings involving allegations of fraud to arbitration unless special circumstances exist or the parties consent: UCPR 20.8.

9. Transfer between Small Claims Division and General Division

- 9.1. The court may transfer proceedings from small claims division to General Division where it considers that the proceedings should be consolidated with other proceedings already commenced in the General Division.

10. Change of Venue

- 10.1. An application to change the venue under UCPR Part 8 must be made when the defence is filed, or at such other time as the court allows.

- 10.2 The court will not change the venue to another venue that is less than 100 kilometres from the originating venue unless satisfied that there are exceptional circumstances.
- 10.3 The notice of motion must specify the venue to which the applicant seeks the proceedings to be changed. It must be supported by an affidavit that:
- Addresses the matters contained in UCPR r 8.2
 - Sets out the reasons why the party is seeking to change the venue
 - If relevant, includes material in support of any assertion of exceptional circumstances.
- 10.4 The registrar will list the proceedings for either a call-over or a pre-trial review within six weeks and will send a copy of the defence, the notice of motion and the affidavit to all other active parties.
- 10.5 If another party objects to the change of venue then the party may, within 14 days of receiving the notice of listing, file and serve an affidavit outlining the reasons why the party says the venue should not be changed.
- 10.6 Unless the court otherwise orders, a notice of motion for change of venue will be determined:
- After 14 days from the date that the notice of listing was sent
 - In the absence of the parties.
- 10.7 Where the court decides to change the venue, the registrar at the originating venue will:
- Vacate any listings at the originating venue
 - Re-list the proceedings at the new venue
 - Advise the parties of the new listing arrangements.
- 10.8 Where the court decides that the venue not be changed the registrar will:
- Advise the parties
 - Confirm the listing at the originating venue.
- 10.9 Unless the court otherwise orders, the maximum costs order that the court will allow on the notice of motion is \$150 in relation to proceedings in the Small Claims Division and \$300 in relation to proceedings in the General Division.

PART B – General Division Case Management

11. General Principle

- 11.1. The court will case manage the proceedings having regard to the objects specified in s57(1) CPA.

12. Standard Directions

- 12.1. The proceedings will be listed for a first call-over within six weeks of the date on which the first defence is filed.
- 12.2. The court will advise the parties of the date of the first call-over and send them a copy of the standard directions (see Annexure A of the Practice Note).
- 12.3. Unless the court otherwise order, the parties must comply with the standard directions.

13. First call-over

- 13.1. The court will give directions designed to assist in the speedy determination of the real issues between the parties to the proceedings. These may include:

- Making orders under CPA Part 6
- Allocating a date for return of subpoenas
- Referring the proceedings to mediation or arbitration
- Directing the parties to complete a civil listing advice (see Annexure B of the practice note) that must be filed in court on the next listing date.

13.2. The court may set a trial date and a review date.

13.3. If the court does not set a trial date and a review date then it will list the proceedings for a second call-over.

14. Second call-over/Directions hearing

14.1. The second call-over will be held within 28 days of the first call-over.

14.2. At the second call-over, the court will:

- Fix a trial date and a review date.
- Give such directions as are necessary to assist in the speedy determination of the real issues between the parties to the proceedings.

14.3. If the parties are not ready to take a trial date then the proceedings will be set down for a directions hearing before a magistrate.

14.4. Unless the court orders otherwise, the directions hearing will take place within 14 days of the second call-over.

15. Review

15.1. Unless the court otherwise orders, the review will be listed approximately four weeks before the trial date.

15.2. Where the parties are legally represented, the legal representative for each party must file in court and serve a completed and signed civil listing advice (Annexure B)

15.3. The court will:

- Inquire whether the court's directions have been complied with
- Inquire whether the proceedings are ready for trial
- Satisfy itself as to the accuracy/appropriateness of the time estimates given by the parties in the civil listings
- Inquire as to the availability of witnesses and the requirement for them to attend for cross-examination.

15.4. If the court's earlier directions have not been complied with then the court may make such orders as it considers appropriate including:

- Dismissing the proceedings or a cross claim
- Striking out a defence
- Making a costs order.

15.5. If a party has not served evidence in accordance with the standard directions or other order of the court, then the court may allow further time to serve the evidence on condition that if the evidence is not served within that further time, the party will not be able to rely on the evidence in chief at the hearing without leave of the court.

15.6. The court may impose limits on the time to be taken at the trial for:

- Opening addresses
- Presentation of a party's case including cross-examination

- Closing addresses.

15.7. A party may not exceed these time limits unless special circumstances exist and the court gives leave to do so.

16. Notices of Motion

- 16.1. Interlocutory disputes between the parties should be resolved by filing and serving a notice of motion in accordance with rule 18.2 UCPR. Parties must file any notices of motion as soon as practicable. The parties should not wait until the next occasion when the case is before the court to consider seeking orders or filing a motion.
- 16.2. A notice of motion will be listed in the general motions list on the first available date, the parties must be ready to deal with the notice of motion on that date.
- 16.3. Parties will not be permitted to cross-examine witnesses at an interlocutory hearing unless they can demonstrate that there are cogent and compelling reasons for doing so having regard to the principles set out in CPA Part 6, Division 1.

17. Trial

- 17.1. Despite UCPR 31.1(2), the evidence in chief of any witness shall be given by affidavit or written statement.
- 17.2. In accordance UCPR 31.4, unless the interests of justice otherwise dictate, each party will be required to serve on each other active party, an affidavit or a written statement of the evidence of the witness that is intended to be adduced in chief.

18. Vacating the Trial

- 18.1. A party who wishes to vacate a trial date must file a notice of motion **not less than 21 days** prior to the trial date.
- 18.2. A party may apply to vacate a trial date **within 21 days** of the trial date if unforeseen circumstances arise (e.g. a witness becomes ill). The notice of motion:
- Must be filed as soon as practicable and not later than the next working day after the party becomes aware of the unforeseen circumstances
 - May be filed without waiting to obtain the consent of the other party

19. Appearance by telephone or audio-visual link (AVL) at the trial

- 19.1. Any application for a party or a witness to be given leave to appear by AVL or telephone at the trial should, wherever practicable, be made at the time the proceedings are listed for trial.
- 19.2. An application may be made at a later date in the event of unforeseen circumstances, in which case it is to be:
- Made no later than 28 days prior to the trial date,
 - In the form set out at Annexure C, and
 - Determined by a magistrate in chambers, unless the magistrate considers there is good reason in the interests of justice for the application to be heard and determined in court.
- 19.3. The magistrate may refuse an application made at a later date if court facilities to enable a party or witness to appear by AVL or telephone are unavailable on the trial date.
- 19.4. If leave is granted for a party or a witness to appear by AVL or telephone then the party who sought leave is responsible for:
- If relevant, booking the remote AVL facility, paying any costs associated with the use of the AVL and arranging for the attendance of the party or the witness at that facility

- If relevant, arranging for the party or the witness to telephone the court at the relevant time during the trial
- Providing the party or the witness with a copy of any affidavits, written statements or documents to which the party or the witness may be referred while giving his or her evidence.

PART C – Small Claims Division Case Management

20. General Principles

- 20.1. The court will case manage the proceedings having regard to the objects specified in s57(1) CPA.
- 20.2. The court will conduct proceedings in the Small Claims Division with as little formality and technicality as the proper consideration of the proceedings permit.

21. Pre-Trial Review

- 21.1. The proceedings will be listed for pre-trial review within six weeks of the date on which the first defence is filed.
- 21.2. The court will advise the parties of the date of the pre-trial review.
- 21.3. The objective of the pre-trial review is to provide an opportunity for the court to assist the parties to settle their dispute.
- 21.4. Parties must attend in person or, if legally represented, the legal representative must attend and have authority to settle the dispute.
- 21.5. The court may refer the parties to mediation.
- 21.6. If the proceedings do not settle at the pre-trial review then the parties must:
 - Identify the issues in dispute and disclose, as far as is known, the witness statements and documents upon which they propose to rely at the hearing
 - Complete the pre-trial review sheet (Annexure D of the Practice Note) and file it in court at pre-trial review.
- 21.7. Any interlocutory applications (including to issue a subpoena) and any application to orally examine a witness at the trial must be made at the pre-trial review.
- 21.8. When deciding whether to order a witness to attend the trial to be orally examined, the court will consider:
 - The particular circumstances of the case, including the amount involved
 - Whether there is a real issue as to credibility
 - Whether there is a significant conflict in the evidence.
- 21.9. The court will generally make the case management order contained in Annexure E of the Practice Note.
- 21.10. If a party does not file and serve documents or witness statements in accordance with the case management order, the party will not be able to rely on those documents or witness statements at the hearing without leave of the court.

22. Notices of motion

- 22.1. Unless the rules otherwise provide, or leave is granted by the court, interlocutory applications in Small Claims proceedings are to be made orally at the pre-trial review: LCR r 2.10.

23. Vacating a trial date

- 23.1. A party who wishes to vacate a trial date must file a notice of motion **not less than 21 days** prior to the trial date.
- 23.2. A party may apply to vacate a trial date **within 21 days** of the trial date if unforeseen circumstances arise (e.g. a witness becomes ill). A notice of motion:

- Must be filed as soon as practicable and not later than the next working day after the party becomes aware of the unforeseen circumstances
- May be filed without waiting to obtain the consent of the other party.

24. Trial

- 24.1. A 'formal trial', that is, the normal adversarial trial where oral evidence is taken on oath, and witnesses are cross-examined is not available in the Small Claims Division.
- 24.2. Subject to any direction of the court, parties do not have the right to call a witness to give evidence, to cross-examine a witness or to give oral evidence at the hearing.
- 24.3. Proceedings will be heard and determined in open court on the basis of the documentary evidence that has been served and filed in accordance with the case management order. If evidence is not served and filed within the time directed then the party will not be able to rely on the evidence without leave of the court.
- 24.4. Where a direction has been made that a witness is to attend for cross-examination, the party relying on the statement of the witness as evidence in chief is responsible for securing the attendance of the witness for cross-examination. The proceedings will be heard and determined on the oral evidence together with the documentary evidence that has been filed and served in accordance with paragraph 23.2.
- 24.5. Parties may attend, make comments, present arguments and make final submissions on the evidence.
- 24.6. The procedure at the trial of the proceedings will be determined by the magistrate or assessor as he or she thinks fit.

25. Appearance by telephone or audio-visual link (AVL) at the trial

- 25.1. Any application for:
- A party, or
 - A witness who has been ordered to attend the trial to be orally examined,
- to be given leave to appear by telephone or AVL at the trial should, wherever practicable, be made orally at the pre-trial review.
- 25.2. An application may be made at a later date in the event of unforeseen circumstances, in which case it is to be:
- Made no later than 14 days prior to the trial date,
 - In writing, and
 - Determined by a magistrate or assessor in chambers, unless the magistrate or assessor considers there is good reason in the interests of justice for the application to be heard and determined in court.
- 25.3. The magistrate or assessor may refuse an application made at a later date if court facilities to enable a party or witness to appear by telephone or AVL are unavailable on the trial date.
- 25.4. If leave is granted for a party or a witness to appear by telephone or AVL then the party who sought leave is responsible for:
- If relevant, booking the remote AVL facility, paying any costs associated with the use of the AVL and arranging for the attendance of the party or the witness at that facility,
 - If relevant, arranging for the party or the witness to telephone the court at the relevant time during the trial,
 - Providing the party or the witness with a copy of any affidavits or documents to which the party or the witness may be referred while giving his or her evidence.

PART D – Subpoenas And Applications For Disclosure Of Documents

26 Issuing subpoena

26.1 Parties must issue subpoenas as early as possible so that documents can be produced and inspected, and be available for the proper preparation of the case, including engaging any expert witnesses.

27 Seeking leave to issue a subpoena

27.1 Litigants in person and parties in Small Claims Division proceedings need the leave of the court to issue a subpoena (UCPR 7.3).

27.2 An application for leave to issue a subpoena in the Small Claims Division must be made at the pre-trial review.

27.3 A litigant in person may seek leave to issue a subpoena either orally before the court or by lodging the following documents with the registry:

- A copy of the subpoena
- A letter setting out the reasons why leave is sought to issue the subpoena.

27.4 If a person is seeking leave to issue a subpoena to give evidence, the letter must explain why the subpoenaed person's evidence would be relevant. If a person is seeking leave to issue a subpoena to produce, the letter must explain why the documents would be relevant.

27.5 The registrar will consider the application in the absence of the public (usually within 24 hours of it being lodged) and advise the applicant of his/her decision.

28 Access to Subpoenaed Documents

28.1 The court will make an order about who may access documents that are produced on subpoena.

28.2 The issuing party may propose an access order by completing the "Proposed access order" section of the Subpoena to produce with subpoena notice and declaration (form 26A) or the Subpoena to give evidence and produce with subpoena notice and declaration (form 27A).

28.3 If the issuing party does not propose an access order then the following default access order will apply:

General access to all parties including photocopy access, "or download access" if subpoenaed documents are lodged electronically.

28.4 Wherever possible, a subpoena to produce should seek the production of copies rather than original documents.

28.5 The producing party must return a copy of the subpoena with the documents or things that are produced to the court under the subpoena.

28.6 Where a large volume of material is produced to the court and inspection cannot conveniently be carried out in the registry, the court may order the parties to:

- Arrange a location where the documents can be securely stored and inspected
- Organise and pay for the secure transportation of the documents to and from that location
- Inspect the documents at that location

28.7 The subpoena can be stood over to another return date if:

- Some or all of the documents or things have not been produced by the return date
- The producing party and the parties to the proceedings cannot agree as to the terms of an access order

- There is a pending application in relation to the subpoena.

28.8 The registrar will set a new return date if:

- The issuing party and producing party cannot agree on the date.
- Neither the issuing party nor the producing party appears on the return date, the subpoena has not been complied with or fully complied with and the issuing party applies for a new date in writing within 7 days of the return date.

The issuing party must notify all other active parties of the new return date.

28.9 When the court no longer requires the subpoenaed material, it will:

- Return original material or material that is a mix of original and copied material to the producing party
- Securely destroy any copied material.

28.10 A party cannot access produced documents until the court has made an order allowing the party to access the documents.

28.11 The court will make access orders each day in relation to:

- Documents and items that have been produced to the registry before the close of the business day before the return date
- Documents and items that are produced in court on the return date where the producing party has no objection to the proposed access order and no other party appears to object to the proposed access order.

28.12 Unless the court otherwise orders, an access order will be made in accordance with:

- The proposed access order
- The default access order if there is no proposed access order.

28.13 The access order includes permission to photocopy the documents.

28.14 Contested subpoena applications will be listed before the registrar.

29 Applications for disclosure of documents

29.1 The Court will not make an order for disclosure of documents (disclosure) [e.g. discovery or where there is an assertion that there has been inadequate compliance with a subpoena or a notice to produce] until the parties have served their evidence, unless there are exceptional circumstances necessitating disclosure.

29.2 No order for disclosure will be made unless it is necessary for the resolution of the real issues in dispute in the proceedings.

29.3 Unless the court otherwise orders, a notice of motion seeking an order for disclosure must be filed and served no later than 14 days after the evidence has been served.

29.4 Any application for an order for disclosure, consensual or otherwise, must be supported by an affidavit setting out:

- The reason why disclosure is necessary for the resolution of the real issues in dispute in the proceedings
- The classes of documents in respect of which disclosure is sought
- The likely cost of such disclosure.

29.5 The court may impose a limit on the amount of recoverable costs in respect of disclosure.

PART E – Expert Evidence

30 Leave to adduce expert evidence

- 30.1 No expert evidence can be adduced without leave of the court.
- 30.2 Before the parties seek leave to adduce expert evidence, they must discuss:
- The areas in which expert evidence is required
 - Whether they can agree on a single expert in relation to each area of expertise or they wish to retain their own expert.
- 30.3 Parties must advise the court of the result of their discussions when they seek leave to adduce expert evidence.

31 General Division – Single Expert

- 31.1 A single expert should be used wherever possible.
- 31.2 If the parties agree on a single expert and the court gives leave to appoint the expert that the parties must engage and brief the single expert.
- 31.3 The single expert must send a copy of his or her report to each party, through their legal representatives.
- 31.4 The parties may ask the single expert to provide a supplementary report taking into account any new or omitted factual material.
- 31.5 Unless the court otherwise orders, a party may put a maximum of 10 written questions to the single expert for the purpose of clarifying matters in the report. The expert must answer the questions within 14 days.
- 31.6 Unless the parties otherwise agree or the court otherwise orders, the single expert's fees are to be paid equally by all the parties.
- 31.7 The single expert's report must be provided to the court prior to the trial commencing.

32 General Division – Joint Experts' Report

- 32.1 Where parties cannot agree on a single expert, the court may give leave for each party to call their own expert witness.
- 32.2 The experts are to prepare a joint report outlining the issues in dispute and not in dispute.
- 32.3 The experts are to prepare a joint report outlining the matters in agreement between them, and the matters in which there is no agreement and the reason why there is no agreement.
- 32.4 The court may make directions about the preparation of the joint report.
- 32.5 The joint report is to be signed by the experts and provided to the court prior to the commencement of the trial.

33 Small Claims Division – Single Expert

- 33.1 If the court gives leave to adduce expert evidence, then the following directions are taken to have been made unless the court otherwise orders:
- (a) Within 14 days of leave being given to adduce expert evidence, the parties must agree on the single expert witness to be retained and obtain that expert's concurrence

- (b) If the parties cannot agree on a single expert witness and obtain that expert's concurrence within 14 days, then the parties must immediately notify the court, which will then appoint a single expert.
 - (c) Within 14 days after the single expert witness has been selected or appointed, the parties must:
 - Agree on how the expert is to be briefed, ensuring that the expert will be briefed with sufficient material to enable him or her to prepare a report.
 - Brief the expert in the agreed manner.
- 33.2 If the parties cannot agree on how the single expert witness is to be briefed, they must immediately notify the court, which will then give directions about how the single expert is to be briefed.
- 33.3 The single expert witness must provide his or her report to the parties within 21 days on which the single expert witness was briefed.
- 33.4 The single expert witness may be requested to provide a supplementary report that takes into account any new or omitted factual material.
- 33.5 Any party may, subject to all just exceptions and s.177 of the Evidence Act 1995:
 - Tender the single expert witness report/s
 - Cross-examine the single expert witness.
- 33.6 A single expert witness's fee for preparation of the report and any supplementary report and for attending court (if required to do so) is to be paid by the parties equally, subject to other agreement or direction and subject to any later order concerning the costs of the proceedings.
- 33.7 A single expert witness may apply to the court for directions.

34 Tendering Expert Reports at the Hearing

- 34.1 Subject to s177 of the Evidence Act 1995, any party may:
 - (a) Tender a single expert's report, a copy of any assumptions of fact and questions put to the single expert and the single expert's answers.
 - (b) Cross-examine the single expert on the report.
- 34.2 A party who serves an expert's report does not have to tender it at the hearing.
- 34.3 If a party who is served with an expert's report wishes to preserve the option of tendering the expert's report in their case, the party should consider:
 - (a) "Back serving" the report on the party who commissioned the report;
 - (b) Whether it is necessary to take steps to have that expert witness available for cross-examination at the hearing.

PART F – Costs

35 Proportionality of costs

- 35.1 The court will in its procedures seek to ensure that costs to parties remain proportionate.
- 35.2 Immediately before the first day allocated for trial, the lawyer for a party is to provide the party with a written notice of:
 - (a) The party's actual costs, both paid and owing up to and including the first day of trial;
 - (b) The estimated future costs of the party up to the completion of the trial, and
 - (c) Any expenses paid or payable to an expert witness or if those expenses are not known, an estimate of the expenses.

(d) An estimate of the costs that may be payable by the party is unsuccessful in the proceedings.

35.3 At the commencement of the trial, the lawyer for a party is to provide the court with a notice confirming compliance with paragraph 35.2.

35.4 In this paragraph “lawyer” does not include counsel instructed by another lawyer.

36 Costs at the end of the trial

36.1 The legal representatives must be prepared to deal with a costs argument at the end of a trial including any application for an award of costs on an indemnity basis.

36.2 The court may fix the amount of costs or order that the quantum of costs be as agreed or assessed.

36.3 To assist the court to fix the costs, the legal representatives should have available:

- (a) A summary of the fair and reasonable costs that will be sought if their client is successful.
- (b) Evidence of time spent (eg copies of time ledger print outs, file notes and memoranda).
- (c) A copy of the written notice as required by paragraph 35.2.

36.4 The court will not engage in an assessment (i.e. allowing or disallowing individual items on a bill of costs) when fixing an amount of costs. Instead, it will consider whether the time spent on the case was reasonable in all the circumstances.

36.5 If parties agree on the quantum of costs after the hearing, they can file consent orders without the need for a further attendance at court.

36.6 LCR Part 2 limits the costs that can be awarded at the end of a trial in the Small Claims Division.

37 Guideline Amounts

37.1 Schedule 1 of the Legal Profession Uniform Law Application Regulation 2015 sets the costs that can be awarded for the recovery of certain debts and the enforcement of certain judgments.

37.2 The Local Court and the Law Society of NSW have previously developed guidelines for calculating the amount of costs that can be awarded in relatively short and straightforward matters.

37.3 The amount of costs that will be awarded in relatively short and straightforward matters will be calculated as follows:

- (a) Preparation of documents where Schedule 1 of the Legal Profession Uniform Law Application Regulation 2015 does not apply (e.g. defences, subpoenas) – drawing, typing checking, filing and service - \$32.40 (per 6 minutes)
- (b) Perusals, letters, telephone calls etc - \$32.40 (per 6 minutes)
- (c) Conferences (client and witnesses) - \$32.40 (per 6 minutes)
- (d) Attending interlocutory hearings, preparation for trial (including preparing affidavits), attending court (including traveling and waiting time) - \$32.40 (per ¼ hour or part thereof)
- (e) Disbursements – as reasonably incurred
- (f) Counsel’s fees – as reasonably incurred

37.4 Where a clerk or paralegal carries out the attendances, costs for that person should be allowed at 40% of the amount for a legal practitioner.

37.5 Costs will be increased to reflect future increases in the Consumer Price Index.

37.6 This practice note does not affect the court's power award costs on a different basis from the guideline amounts or to make orders for costs on the indemnity basis in appropriate cases.

PART G – Maximum Costs Orders in the General Division

38 Claims of \$20,000 or less.

38.1 This section applies to all proceedings commenced prior to the 28 February 2019, where the amount of the claim is \$20,000 or less and includes proceedings that are transferred from the Small Claims Division to the General Division.

38.2 Unless the court otherwise orders, the following orders are taken to have been made when the defence is filed in the proceedings:

- (a) If the plaintiff is successful and the claim is for an amount between \$10,000 and \$20,000, then the maximum costs that can be awarded to the plaintiff is 25% of the amount awarded by the court plus any amount that might be allowed in relation to costs incurred up to the filing of the first defence in the proceedings.
- (b) If the defendant is successful and the claim is for an amount between \$10,000 and \$20,000, then the maximum costs that can be awarded to the defendant is 25% of the amount claimed by the plaintiff
- (c) Where the proceedings were transferred from the Small Claims Division to the General Division, then the maximum costs that can be awarded to the successful party is \$2,500.

38.3 A party may file and serve a notice of motion and supporting affidavit seeking to vary the maximum costs order at any time up until two weeks prior to the first review date.

38.4 The notice of motion must specify the amount sought as an alternative maximum costs order.

38.5 The supporting affidavit must:

- (a) Explain why it is appropriate to vary the maximum costs order in light of the importance of the subject matter of the proceedings and the complexity of the proceedings
- (b) Include an estimate of the costs of the party on an ordinary basis as at the date of the application
- (c) Include an estimate of the costs on an ordinary basis that will be incurred between the date of the application and the completion of the trial.
- (d) Not annex any bills of costs.

38.6 Any other party may file and serve an affidavit in response to the notice of motion. That affidavit may specify an alternative maximum costs order.

38.7 If any other party files and serves an affidavit then the notice of motion will be listed before the court.

38.8 The court may confirm or vary the amount of the maximum costs order or make such other order as is appropriate.

38.9 If a cross-claim has been made in the proceedings then the successful party will be entitled to a costs order as if the cross-claim had been commenced in separate proceedings.

38.10 The maximum costs order referred to in paragraph 38.2 does not include the costs of any notice of motion, which will be separately determined by the court at the time of the hearing of the notice of motion.

39 All Claims

39.1 Paragraph 39.2 applies to all proceedings in the General Division, regardless of the amount claimed, where the plaintiff or cross claimant:

- (a) Has obtained a judgment in an amount that is less than \$10,000 against the defendant or cross defendant (or all defendants or cross defendants, if more than one); and

(b) Would be entitled to an order against the defendant or cross defendant.

39.2 An order for costs will not be made in an amount greater than that which would otherwise have been awarded if the proceedings had been determined in the Small Claims Division, unless the court is satisfied the commencement and/or continuation of the proceedings in the General Division rather than the Small Claims Division was warranted.

PART H – Pre-Judgment Interest

40 Practitioners and litigants should expect that where, pursuant to section 100(1) and (2) of the CPA, interest in respect of a pre-judgment period is to be included in a judgment, the court will have regard to the following rates, being rates agreed upon by the Discount and Interest Rate Harmonisation Committee established following a referral by the Council of Chief Justices:

- (a) In respect of the period from 1 January to 30 June in any year – the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before that period commenced and
- (b) In respect of the period from 1 July to 31 December in any year – the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before that period commenced.

PART I – Online Court Protocol

41 Purpose of this Part

41.1 This Part is to enable the use of Online Court in the Local Court Civil Jurisdiction for proceedings in a list approved by the Chief Magistrate.

41.2 Definitions - In this Part:

- ***court date*** means a date on which the proceeding is listed for case management.
- ***delegate*** means a managing lawyer or employed support staff member who is registered as a delegate by the practitioner on the record via the ORW.
- ***party*** means a party to a proceeding, and includes a practitioner on the record who is representing the party in the proceeding and any delegate of the practitioner
- ***practitioner*** means legal practitioner

41.3 The purpose of Part H is to minimise the cost and inconvenience of in-person court appearances by enabling parties to make online requests without the need to attend court.

42 Conduct in an Online Court

42.1 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 that may be considered and determined by a registrar.

42.2 OLC is not to be used for communications solely between the parties.

42.3 Parties should conduct themselves and use language in the OLC as they would during an in-person court appearance.

42.4 A registrar may, from time to time, give instructions as to:

- (a) the acceptable length of reasons for requests and messages in an OLC; and
- (b) the time and date by which requests and responses to requests must be made.

- 42.5 If a message is submitted to the OLC by a delegate for a practitioner on the record, the practitioner is taken to have affirmed to the Court that he or she has actual knowledge of its contents
- 42.6 Undertakings given in an OLC by parties are as binding as if the undertaking were given in an in-person courtroom appearance.
- 42.7 Parties will be notified by email when a message has been sent in the OLC.

43 Commencement of an Online Court

- 43.1 When a proceeding enters an approved list, and each of the parties is a registered user of the ORW, it is eligible and will be activated for OLC.
- 43.2 All parties will be notified immediately by email that the proceeding is eligible and has been activated for OLC.

44 What may be dealt with in Online Court.

- 44.1 OLC may be used for interlocutory or procedural matters that may arise during case management of the proceeding. Matters in the OLC will be conducted in accordance with Local Court Practice Note Civ 1 (and s 71 of CPA).
- 44.2 In the OLC, parties may request the following:
- (a) Adjournment of the proceeding;
 - (b) Interlocutory orders pursuant to Part 6 of CPA;
 - (c) Fixing of a trial date; and
 - (d) Referral of matters to directions hearing before a magistrate.

45 How will matters be dealt with in Online Court

- 45.1 For each court date, the following communications are to be made in the OLC:
- (a) **Request:** a party may make a request for interlocutory orders
 - (b) **Response:** each other party will be automatically notified of the request, and is to respond by consenting to the request or making a counter request.
 - (c) **Further response:** each other party will be automatically notified of the response. If a counter request is made, each other party is to respond by indicating their consent or opposition to the counter request.
- 45.2 All requests (or counter requests) in OLC must be supported with reasons.
- 45.3 Any communication referred to in paragraph 45.1 must be made prior to the court date by the date/time stipulated by the registrar. If a communication is not received by the stipulated date/time, the registrar may determine whether the parties are required to attend in person on the court date and make orders accordingly.
- 45.4 Failing to submit requests, responses, counter requests or consents on the OLC in accordance with timeframes described within this Practice Note or in accordance with timeframes otherwise ordered or directed by the registrar of the OLC, will be treated as a non-appearance in the proceedings.
- 45.5 Any second or subsequent non-appearance by a party in the OLC may result in either the statement of Claim being dismissed and/or the defence being struck out in accordance with UCPR 12.7 and/or Local Court Rule 2.7(7).

46 Registrar Orders

- 46.1 When the registrar makes an order in the OLC an automatic email will be sent to all parties.

47 Messaging

47.1 At any time during the OLC:

- (a) A party may send a message to the registrar regarding any case management issues between the parties; and
- (b) The registrar may choose to send a message to the parties if it appears there are case management issues requiring resolution.

47.2 Messages sent will be visible to all parties.

48 Costs in Online Court

48.1 On occasion the registrar may determine that the parties are required to attend in person on a court date and will make orders accordingly.

48.2 On a court date at which the parties are required to appear in person, the registrar may consider any application for costs from parties to cover the costs of appearance in person and/or costs of preparation of any OLC request.

48.3 In determining the costs application, the registrar may take into account any relevant consideration, including without limitation:

- (a) Any failure of a party to respond to a request (s 56(5) CPA);
- (b) Whether the in-person court appearance could have been avoided if the party had responded to an OLC request; and
- (c) Whether there is a reasonable explanation for not responding to an OLC request.

49 Consent Orders

49.1 As far as practicable, 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.

49.2 Any terms agreed between the parties should be included as orders sought in the request.

50 Terminating an Online Court Request

50.1 An OLC request may be terminated at any time by the registrar and the proceeding listed for resolution at an in-person court appearance before a registrar or a directions hearing before a magistrate.

51 Documents

51.1 Documents can be attached as part of a request or attached to a message. Any attached documents will be viewable by all parties and the registrar.

51.2 Where parties require documents to be formally filed, they should do so via the ORW and not via the OLC.

52 Obtaining copy of Online Court Record

52.1 All activity in the OLC including requests, consents, counter requests and messages will be recorded in the OCR and will be visible to all parties and the registrar.

52.2 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 proceeding

Judge Graeme Henson AM
CHIEF MAGISTRATE

Amendment History

This practice note replaces the former version of Practice Note Civ 1 (17 July 2017) and Online Court 1 of 2015 . Practice Note Civ 1 replaced former Practice Note 1 of 2000, Practice Note 1 of 2001 (insofar as it applies to civil proceedings), Practice Note 1 of 2005, Practice Note 2 of 2005, Practice Note 2 of 2007, Practice Note 3 of 2007, Practice Note 6 of 2007, Practice Note 1 of 2009, Practice Note 3 of 2010 and Practice Note 5 of 2015.

Annexure A

Local Court of New South Wales GENERAL DIVISION

STANDARD DIRECTIONS (Pursuant to Practice Note Civ 1)

<u>COURT APPEARANCES</u>	<u>DATE</u>	<u>TIME</u>
--------------------------	-------------	-------------

CALL OVER DATE (Attendance of behalf of all parties is required if a Notice of Listing is received)
(Review and Trial date will be allocated at call-over)

If the parties fail to comply with the court's directions it can be expected that the statement of claim will be dismissed or the defence struck out and orders will be made that the non complying party pays the costs of the other party.

STANDARD DIRECTIONS (applicable only to matters to be heard by the court)

Unless the interests of justice otherwise dictate, the evidence in chief of any witness shall be given by affidavit or written statement. The parties should note that UCPR 35.2 allows affidavit evidence in chief of a witness to be relied upon, unless reasonable notice of the requirement of the deponent to attend for cross examination is given.

1. The court will allocate a trial date and a review date at the call-over.
2. The plaintiff/cross defendant is to serve all evidence to be relied upon in their case as follows:-
 - i. Affidavits or written statements of witnesses on all relevant matters of fact, together with a chronological and paginated bundle of all relevant documents* , by..... *[4 weeks before review date]*
 - ii. Any expert report(s) (in accordance with Pt 31 Div 2 UCPR) by *[4 weeks before review date]*
3. The defendant/cross claimant is to serve all evidence to be relied upon in their case as follows:
 - i. Affidavits or written statements of witnesses on all relevant matters of fact, together with a chronological and paginated bundle of all relevant documents* , by *[4 weeks before review date]*
 - ii. Any expert report(s) (in accordance with Pt 31 Div 2 UCPR) by *[4 weeks before review date]*
4. Each party must prepare sufficient copies of all of their evidence to enable the court and every party (including that party) to have a copy of the evidence.
5. **Other than provided for in paragraph 6, parties must not file their evidence prior to the trial unless the court otherwise orders.**
6. **A single expert's report or a joint report prepared after a conclave between a number of experts is to be filed with the court prior to the trial.**
7. Each party or their legal representative must attend the review and file a written summary of the case, including a reference to any relevant case law or statute.
8. The parties must discuss whether they agree about any facts and the issues that are in dispute. If the parties:
 - i. **Agree** about any facts and issues - then the plaintiff must file a statement of agreed facts and issues at least 7 days before the trial.

- ii. **Do not agree** about the facts and issues - then each party must file a statement of facts and issues at least 7 days before the trial.
9. Where a party does not serve evidence in accordance with these or any other directions made by the court then that defaulting party may not be allowed to rely on that evidence at the trial the court is satisfied that it is the interests of justice to allow the defaulting party to do so.
10. Failure to comply with the Court's directions may result in the statement of claim or cross claim being dismissed, or the defence being struck out, with costs.
11. All cases should be ready to proceed on the trial date.

* 'Document' has the same meaning as in the Dictionary to the *Evidence Act 1995*. It may include (but is not limited to) the following: correspondence, electronic correspondence such as emails and SMS messages, agreements in writing, letters, notes, invoices, receipts, records of payments, bank statements, photographs and videos.

Annexure B

LOCAL COURT CIVIL LISTING ADVICE

(IMPORTANT – Where the parties are represented by a barrister or solicitor a completed and signed copy of this document must be given to each party’s representative on the review date)

Parties:	-v-
Case Number(s):	
HEARING DATE:	

Estimated Time for Examination In Chief:	Estimated Time for Examination in Chief	Estimated Time for Cross Examination:	Total Time Witness Required:
Plaintiff - <u>WITNESSES</u>			
1.			
2.			
3.			
4.			
5.			
TOTAL:			
Defendant - <u>WITNESSES</u>			
1.			
2.			
3.			
4.			
5.			
TOTAL:			
TOTAL ESTIMATED OF LENGTH OF HEARING:			
IS AN INTERPRETER REQUIRED: * Onus to Party to Organise	YES/NO (please circle one)		
WHAT LANGUAGE:			
Audio Visual Link Appearance * Onus on Party to Organise	YES/NO State or Country:		
All Interlocutory Motions Filed and Disposed of:	YES/NO		
All Subpoenas have been issued and complied with:	YES/NO		
Checked Availability of Witnesses for hearing date:	YES/NO		
PLAINTIFF'S SOLICITOR/COUNSEL	CONTACT NO:	SIGNATURE:	
DEFENDANT'S SOLICITOR/COUNSEL	CONTACT NO:	SIGNATURE:	

Annexure C

Application for Witness to Give Evidence via Telephone or Audio Visual Link Evidence (Audio and Audio Visual Links) Act 1998

Note: This application will be dealt with in Chambers unless there is good reason for it to be listed before a Court, which must be indicated at the time of lodgment. This application, together with all relevant information, should be submitted in writing not less than 10 days before the trial date.

You will be advised of the outcome of the application.

Part A (Applicant to complete)

In the matter of:

Trial date:

Court location:

Application lodged on behalf of:

Plaintiff / Defendant

I consent to this application being dealt with in Chambers: Yes / No

(If 'No') I submit it is in the interests of justice for this application to be determined in court because:

Method of giving evidence: Audio Visual Link (AVL) (*preferred*) / Telephone

Name of witness:

Interpreter required: Yes / No

If yes - language required:

The witness is:

- an expert in relation to (*specify, if applicable*):
- required to give evidence that is unlikely to be contentious
- a Government Agency Witness (*s 5BAA - specify, if applicable*):
- otherwise required for (*specify, if applicable*):

Estimated time of witness evidence:

Minutes / Hours / Days

Confirmation: Facilities are available at the following location from which the witness is able to appear to give evidence:

- Nature of facilities:
- Jabber (*preferred*)
 - Skype
 - Facetime
 - Commercial videoconferencing suite
 - Telephone
 - Other (*specify, if applicable*):

I submit it is in the interests of the administration of justice for the court to grant the application because:

Name of applicant:

Signature:

Date:

Address:

Email:

Phone:

Fax:

Part B (Other party to complete – a faxed or emailed copy is sufficient)

I **agree** to this application: Yes / No

I **do not agree** to this application for the following reason/s (s 5B(2)):

The evidence can more conveniently be given in the courtroom, because:

The direction would be unfair to a party to the proceeding, because:

The person in respect of whom the direction is sought will not give evidence, because:

Other:

I consent to this application being dealt with in Chambers: Yes / No

(If 'No') I submit it is in the interests of justice for this application to be determined in court because:

Name of other party:

Signature:

Date:

Address:

Email:

Phone:

Fax:

Part C (Magistrate/Office use only)

AVL / Telephone facilities are available: Yes / No

Registrar / List Clerk of the Local Court at:

Signature:

Date:

Magistrate decision: Application Granted / Refused

Magistrate:

Date:

Copy to: Registry / Parties

Annexure D

PRE-TRIAL REVIEW SHEET

Plaintiff:

File Number:

Defendant:

PLAINTIFF'S SUMMARY OF CASE:

(This section to be completed by or on behalf of plaintiff)

Documentary evidence intended to be relied upon at hearing:

Name of Witnesses:	Other Material
1.	1.
2.	2.
3.	3.
4.	4.

Has the plaintiff made offers of settlement, attempted mediation or otherwise attempted to resolve the issues in dispute?
Yes/No

DEFENDANT'S SUMMARY OF CASE:

(This section to be completed by or on behalf of defendant)

Documentary evidence intended to be relied upon at hearing:

Name of Witnesses:	Other Material
1.	1.
2.	2.
3.	3.
4.	4.

Issues in dispute:

Motor vehicle claims:

Ownership /Liability /Agency /Quantum /Demurrage /Loss of Use
(Circle relevant issues)

Other claims:

Has the defendant made offers of settlement, attempted mediation or otherwise attempted to resolve the issues in dispute? Yes/No

Annexure E

SMALL CLAIMS DIVISION CASE MANAGEMENT ORDER

COURT DETAILS

Court
Division
Registry
Case number

TITLE OF PROCEEDINGS

First plaintiff
Number of plaintiffs
First defendant
Number of defendants

HEARING DETAILS

Date:
Time:
Place:

Last Date for Exchange and Filing of Documentary Evidence:

Case Management Order:

1. Unless the court makes an order permitting oral evidence to be given at the hearing, the proceedings will be determined on the basis of the written witness statements and other documentary material that is filed and served no later than the date referred to above (being no later than 14 days before the hearing).
2. The court may allow any documents produced under subpoena issued with the leave of the court or produced under a notice to produce to be admitted as evidence.
3. If a party fails to file and serve affidavits and other documentary material at least 14 days before the hearing then the court may refuse to allow the party to rely on that evidence at the hearing.
4. The hearing will be conducted with as little formality as possible. The rules of evidence do not apply at the hearing.
5. Each party will have the opportunity to attend and make comments and present arguments and provide final submissions on the evidence.
6. If a party fails to attend the hearing the court may strike out the statement of claim or defence.

**Signature
(Date)**