



Local Court of New South Wales  
Practice Note Civ 1

Issued pursuant to  
s 15 of the *Civil Procedure Act 2005 (NSW)* and s 27 of the *Local Court Act 2007 (NSW)*

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TABLE OF CONTENTS

1. Commencement .....	2	<b>PART E - Expert Evidence</b> .....	12
2. Application .....	2	30. Leave to adduce expert evidence .....	12
3. Introduction .....	2	31. General Division – single expert .....	13
<b>PART A - General Provisions</b> .....	3	32. General Division – joint experts' report .....	13
4. Directions .....	3	33. Small Claims Division – single expert .....	13
5. General adjournments .....	3	34. Tendering expert reports at the trial .....	14
6. Representation .....	3	<b>PART F - Costs</b> .....	15
7. Dismissal .....	3	35. Proportionality of costs .....	15
8. Alternative Dispute Resolution .....	3	36. Costs at the end of the trial .....	15
9. Transfer between Small Claims Division and General Division .....	4	37. Guideline amounts .....	15
10. Change of venue .....	4	<b>PART G - Max. Costs Orders in General Division</b> ..	16
11. Applications for appearance in person .....	4	38. Claims of \$50,000.00 or less. ....	16
<b>PART B - General Division Case Management</b> .....	5	39. All claims in the General Division .....	17
12. General Principles .....	5	<b>PART H - Pre-judgment Interest</b> .....	17
13. Standard Directions .....	5	40. Pre-judgment Interest .....	18
14. First call-over .....	5	<b>PART I - Online Court Protocol</b> .....	18
15. Second call-over/Directions hearing .....	6	41. Purpose of this Part .....	18
16. Review .....	6	42. Conduct in the Online Court .....	18
17. Notices of Motion .....	7	43. Commencement of an Online Court .....	18
18. Trial .....	7	44. What may be dealt with in Online Court .....	19
19. Vacating the trial date .....	7	45. How will matters be dealt with in Online Court ....	19
20. Appearance to appear remotely at the trial .....	7	46. Costs in the Online Court .....	19
<b>PART C - Small Claims Division Case Management</b> ..	8	47. Consent Orders .....	20
21. General Principles .....	8	48. Documents .....	20
22. Notices of Motion .....	8	49. Obtaining copy of the Online Court Record .....	20
23. Pre-trial Review .....	8	Amendment History .....	20
24. Vacating a trial date .....	9	Annexure A .....	21
25. Trial .....	10	Annexure B .....	23
<b>PART D - Subpoenas / Disclosure of Documents.</b> ..	10	Annexure C .....	24
26. Issuing subpoena .....	10	Annexure D .....	26
27. Seeking leave to issue a subpoena .....	10	Annexure E .....	27
28. Access to subpoenaed documents .....	11		
29. Applications for disclosure of documents .....	12		

# CASE MANAGEMENT OF CIVIL PROCEEDINGS IN THE LOCAL COURT

## 1. Commencement

1.1. This Practice Note, as amended, commences on 25 June 2022.

## 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 and terms are used in this Practice Note:

CPA means the [Civil Procedure Act 2005](#);

ADR means alternative dispute resolution (including mediation under [Pt 4 of the CPA](#) and arbitration under [Pt 5 of the CPA](#))

LCA means the [Local Court Act 2007](#)

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

“Remote appearance” or (in context) “remotely”, or “remote means” refers to appearances either via Audio Visual Link, Telephone, or other remote means

“Trial” means any hearing that is not an interlocutory hearing

3.3. This Practice Note describes the practice of the Local Court in managing civil proceedings to achieve the just, quick and cheap resolution of the real issues in the proceedings: [s 56\(1\) CPA](#). The Court will case manage the proceedings having regard to the objects specified in [Div 1, Part 6, 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 aim to meet these time standards.

3.5. 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 is under a duty to assist the Court to further overriding purpose, 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 Provisions

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

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 efficient determination of the real issues between the parties to the proceedings.

### **5. General adjournments**

- 5.1. No proceedings are ever stood over indefinitely: [s 66\(1\) 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 the Pre-trial Review, Call-over or Directions hearing.
- 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 a legal representative being insufficiently instructed, a costs order may be made against the party or the legal representative personally.

### **7. Dismissal**

- 7.1. If after nine months from the filing of a statement of claim:

- (a) a defence or cross-claim is not filed; or
- (b) a default judgment is not entered; or
- (c) 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 outstanding 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 matters to ADR.
- 8.2. The Court may refer matters to mediation with or without the consent of the parties.
- 8.3. The Court may, in its absolute discretion, refer proceedings to arbitration.
- 8.4. The Court will not refer proceedings to arbitration in the following circumstances: in the Small Claims Division or proceedings involving allegations of fraud, unless special circumstances exist or the parties consent: [UCPR 20.8](#).

8.5. The ADR proceedings noted in this clause may be held remotely.

## 9. Transfer between Small Claims Division and General Division

9.1. Proceedings are to be transferred from Small Claims Division to General Division where:

- (a) the presiding magistrate or assessor is of the opinion that the proceedings should be consolidated with other proceedings already commenced in the General Division; or
- (b) a cross-claim is made in the proceedings for an amount exceeding the jurisdictional limit of the Court's Small Claims Division: [LCR Pt 2 Div 2](#); or
- (c) the Court is of the opinion that the matters in dispute are so complex or difficult, or are of such importance, that the proceedings ought more properly be heard in the Court's General Division: [LCR Pt 2 Div 2](#).

## 10. Change of venue

10.1. A notice of motion to change the venue must be made when the defence is filed, or at such other time as the Court allows: [UCPR Pt 8](#).

NOTE: When a defence is filed the matter will be listed. If, subsequently, a change of venue is granted the original trial date will be vacated and a new trial date allocated at the new location.

10.2. 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:

- (a) addresses the matters contained in [UCPR 8.2](#);
- (b) sets out the reasons why the party is seeking to change the venue;
- (c) includes material in support of any assertion of exceptional circumstances.

10.3. There must be exceptional circumstances for the Court to change the venue, to another venue within 100 kilometres from the original venue.

10.4. The registrar will serve a copy of the notice of motion and affidavit in support on all parties to the proceedings. If another party objects to the change of venue, then that party must within 14 days of service of the notice of motion, file an affidavit setting out the reasons why the venue should not be changed.

10.5. Any notice of motion to change venue will be determined by the Court, on the papers in chambers.

10.6. The registrar will advise the parties of the determination. Where an application to change venue is successful, the matter will be listed for first call-over at the newly determined venue.

10.7. Unless the Court otherwise orders, the maximum costs order that the Court will allow on the notice of motion is \$150.00 in relation to proceedings in the Small Claims Division and \$300.00 in relation to proceedings in the General Division.

## 11. Applications for appearance in person

11.1. Where this Practice Note requires attendance by remote means, this clause sets out the process by which a party may apply for the matter to be heard in person.

11.2. An applicant party is to email the registry to request that an in-person appearance be granted by the Court no later than five days before the interlocutory hearing or trial date. For the application to be granted, the Court must be satisfied that the dictates of justice are advanced by an in-person appearance order being made.

- 11.3. Leave to appear in person will not be granted on grounds of convenience to parties.
- 11.4. It is the expectation of the Court that the majority of matters will be heard remotely.
- 11.5. There will be few instances where parties will be disadvantaged by the requirement to appear remotely.
- 11.6. Where any disability or impairment cannot be accommodated remotely, proceedings should be conducted in person. The magistrate or assessor will make a decision in chambers as to whether or not an application to appear in person will be granted. The registry will notify affected parties of the decision.

## **PART B – General Division Case Management**

### **12. General Principles**

- 12.1. In order to advance the dictates of justice, all interlocutory steps will be undertaken using the Online Court and/or via remote appearances, unless an application to appear in person is approved by the Court.

NOTE: 'Interlocutory steps' are taken to be all steps in case management process except for the final trial date. For the avoidance of doubt, 'interlocutory steps' includes any motion to set aside a judgment.

- 12.2. Parties are to commence good faith settlement negotiations once evidence is served.
- 12.3. In order to advance the dictates of justice, the Court may direct, regardless of whether an application is made, that an interlocutory step be held in person.
- 12.4. The final trial is to be in person unless otherwise directed by the Court.

### **13. Standard Directions**

- 13.1. The proceedings will be listed for a first call-over within six weeks from the date on which the first defence is filed.
- 13.2. 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).
- 13.3. Unless the Court otherwise orders, the parties must comply with the standard directions.
- 13.4. A registrar may allocate a trial date where the trial is expected to be one day or less.
- 13.5. Where it is expected that the trial will need the allocation of two or more days, the matter must be referred to a magistrate for trial date allocation.
- 13.6. If legally represented, the parties are to exchange any objections to statements or affidavits at least 14 days prior to the trial.
- 13.7. If legally represented, the parties are to file a statement of agreed facts and issues at least seven days prior to the trial.

### **14. First call-over**

- 14.1. The Court will give directions designed to assist in the efficient determination of the real issues between the parties to the proceedings. These may include:
  - (a) making orders under [CPA Part 6](#);
  - (b) allocating a date for return of subpoenas;

- (c) mandatory referral to ADR;
- (d) directing the parties to complete a civil listing advice (see Annexure B) that must be filed in court on the next listing date.

14.2. The Court may set a trial date and a review date.

14.3. If the Court does not set a trial date and a review date, the matter will be listed for a second call-over.

## **15. Second call-over/Directions hearing**

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

15.2. At the second call-over, unless there are exceptional circumstances, the Court will:

- (a) fix a trial date and a review date; or
- (b) make such directions as are necessary to assist in the timely determination of the real issues between the parties to the proceedings; or
- (c) set the matter down for a directions hearing before a magistrate if the parties are not ready to take a trial date.

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

## **16. Review**

16.1. Unless the Court otherwise orders, the review will be listed approximately eight weeks before the trial date.

16.2. Where the parties are legally represented, the legal representative for each party must file and serve a completed and signed civil listing advice (see Annexure B) no later than 2 days prior to the review date.

16.3. The Court may dispense with the need to attend the review date. Parties may indicate their willingness to dispense with review by selecting that option in the form at Annexure B.

16.4. If a review is to take place, the Court will:

- (a) inquire whether the Court's directions have been complied with;
- (b) inquire whether the proceedings are ready for trial;
- (c) satisfy itself as to the accuracy and appropriateness of the time estimates given by the parties in the civil listings; and
- (d) inquire as to the availability of witnesses and the requirement for them to attend for cross-examination.

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

- (a) dismissing the proceedings or a cross-claim;
- (b) striking out a defence; and
- (c) making a costs order.

16.6. 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 trial without leave.

16.7. The Court may impose limits on the time to be taken at the trial for:

- (a) opening addresses;
- (b) presentation of a party's case, including cross-examination; and
- (c) closing addresses.

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

## **17. Notices of Motion**

17.1. 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.

17.2. 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.

17.3. It is the expectation of the Court that Notices of Motion will be heard remotely.

17.4. 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, Div 1](#).

## **18. Trial**

18.1. Despite [UCPR 31.1\(2\)](#), the evidence in chief of any witness shall be given by affidavit or written statement.

18.2. In accordance with [UCPR 31.4](#), and in order to advance the dictates of justice, each party must 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.

18.3. Parties must not file any affidavits or written statements without the leave of the Court.

## **19. Vacating the trial date**

19.1. 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.

19.2. 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). In these circumstances, the notice of motion:

- (a) must be filed as soon as practicable and not later than the next working day after the party becomes aware of the unforeseen circumstances; and
- (b) may be filed without waiting to obtain the consent of the other party.

## **20. Application to appear remotely at the trial**

20.1. Any application for a party or a witness to be given leave to appear remotely at the trial should, wherever practicable, be made at the time the proceedings are listed for trial.

20.2. An application may be made at a later date (e.g., in the event of unforeseen circumstances) is required to be:

- (a) made no later than 28 days prior to the trial date;
- (b) in the form set out at Annexure C; and
- (c) determined by a magistrate in chambers, unless the magistrate considers there is good reason and that the dictates of justice are advanced by the application being heard and determined in court.

20.3. The Court may refuse an application to appear remotely where the required facilities are unavailable on the trial date.

20.4. If leave is granted for a party or a witness to appear remotely, then the party who sought leave is responsible for:

- (a) 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;
- (b) if relevant, arranging for the party or the witness to telephone the Court at the relevant time during the trial; and
- (c) 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**

### **21. General Principles**

21.1. Proceedings in the Small Claims Division are to be conducted with as little formality and technicality as the proper consideration of the matter permits: [s 35\(2\) LCA](#).

21.2. The Court will case manage the proceedings having regard to the objects specified in [Div 1, Pt 6, CPA](#).

21.3. The Court will conduct proceedings in the Small Claims Division with as little formality and technicality as proper consideration of the proceedings permit.

21.4. All interlocutory steps before an assessor in this Practice Note will be undertaken remotely.

21.5. Parties are to commence good faith settlement negotiations once evidence is served.

21.6. The final small claims trial will be conducted by remote means.

21.7. Where circumstances so require, a party may seek the Court's leave to appear in person if it advances the dictates of justice to do so.

21.8. The Court may direct, regardless of whether an application is made, that any step in proceedings must be held in person, if it advances the dictates of justice to do so.

### **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. Pre-trial Review**

23.1. The proceedings will be listed for pre-trial review within six weeks of the date on which the first defence is filed.



- 23.2. The Court will advise the parties of the date of the pre-trial review.
- 23.3. The objective of the pre-trial review is to provide an opportunity for the Court to assist the parties to settle their dispute.
- 23.4. Parties, their authorised representative, or their legal representative, will attend remotely or via the Online Court, as directed and must have authority to settle the dispute.
- 23.5. The Court may refer the parties to mediation.
- 23.6. If the proceedings do not settle at the pre-trial review, then the parties must:
- (a) 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 trial; and
  - (b) complete the pre-trial review sheet (see Annexure D) and file it in court at pre-trial review.
- 23.7. The Court may set a small claims trial date in instances where the matter does not proceed to settlement.
- 23.8. The Court will hear any interlocutory applications (including an application to issue a subpoena) and/or any application to orally examine a witness at the trial.
- 23.9. When deciding whether to order a witness to attend the trial to be orally examined, the Court will consider:
- (a) the particular circumstances of the case, including the amount of money involved;
  - (b) whether there is a real issue as to credibility; and
  - (c) whether there is a significant conflict in the evidence.
- 23.10. The Court may make a case management order as contained in Annexure E of the Practice Note.
- 23.11. If a party does not file and serve documents or witness statements in accordance with the case management order made by the Court, the party will not be able to rely on those documents or witness statements at the trial without leave of the Court.
- 23.12. If the Court does not set a small claims trial date, it will list the proceedings for a second pre-trial review.
- 23.13. Any second pre-trial review will be held within 28 days of the first pre-trial review.
- 23.14. At a second pre-trial review date, unless there are sufficient reasons not to, the Court will:
- (a) fix the matter for a small claims trial; and
  - (b) give such directions as are necessary to assist in the timely determination of the real issues between the parties to the proceedings.

## **24. Vacating a trial date**

- 24.1. 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 unless the Court orders otherwise.
- 24.2. 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:
- (a) must be filed as soon as practicable and not later than the next working day after the party becomes aware of the unforeseen circumstances; and
  - (b) may be filed without waiting to obtain the consent of the other party.

## **25. Trial**

- 25.1. The rules of evidence do not apply to proceedings being heard in the Small Claims Division: [s 35\(3\) LCA](#).
- 25.2. Subject to any direction of the Court, parties do not have the right to call a witness (including expert witnesses) to give evidence, to cross-examine a witness or to give oral evidence at the trial: [s 35\(4\) LCA](#).
- 25.3. Witnesses may attend to give evidence and be cross-examined if such an order is made by the Court.
- 25.4. A magistrate or an assessor exercising the jurisdiction of the Court sitting in its Small Claims Division may inform themselves on any matter relating to proceedings being heard or other proceedings in the Small Claims Division in such manner as he or she thinks appropriate: [s 35\(5\) LCA](#).
- 25.5. Proceedings will be heard and determined in open court based on 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.
- 25.6. Parties or their representatives must attend, and may make comments, present arguments and make final submissions on the evidence.
- 25.7. The procedure at the trial will be determined by the presiding magistrate or assessor.
- 25.8. All small claims trials will be held remotely.

## **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 the engagement of any expert witnesses.

### **27. Seeking leave to issue a subpoena**

- 27.1. All applications are to be made remotely.
- 27.2. Litigants in person and parties in Small Claims Division proceedings require the leave of the Court to issue a subpoena ([UCPR 7.3](#)).
- 27.3. An application for leave to issue a subpoena in the Small Claims Division must be made at the pre-trial review, unless the Court orders otherwise.
- 27.4. 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) a copy of the subpoena; and
  - (b) a letter setting out the reasons why leave is sought to issue the subpoena.
- 27.5. 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 the relevance of the documents sought.

27.6. 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 their decision.

## **28. Access to subpoenaed documents**

28.1. The Court will make an order (an 'Access 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](#)). The sample UCPR forms include guidance notes that practitioners should read before submitting such applications.

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. Otherwise, with the Court's leave, the Access Order will be granted in the form proposed by the applicant party will be made.

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

28.6. The producing party must return a copy of the subpoena to the Court with the documents or things that are required to be produced by the subpoena.

28.7. 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:

- (a) arrange a location where the documents can be securely stored and inspected;
- (b) organise and pay for the secure transportation of the documents to and from that location; and
- (c) inspect the documents at that location.

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

- (a) some or all of the documents or things have not been produced by the return date;
- (b) the producing party and the parties to the proceedings cannot agree as to the terms of an Access Order; or
- (c) there is a pending application in relation to the subpoena.

28.9. The registrar will set a new return date if:

- (a) the issuing party and producing party cannot agree on the date;
- (b) neither the issuing party nor the producing party appears on the return date; or
- (c) 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.

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

28.11. When the Court no longer requires the subpoenaed material, it will:

- (a) return original and copied material or material that is a mix of original and copied material to the producing party; or

- (b) securely destroy any copied material.

28.12. A party cannot access produced documents until the Court has made an order allowing the party to access the documents.

28.13. The Court will make Access Orders in relation to:

- (a) documents and items that have been produced to the registry before the close of the business day before the return date;
- (b) 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.

NOTE: If the subpoena requires you to produce a document, you may produce a copy of the document unless the subpoena specifically requires you to produce the original.

28.14. Contested subpoena applications will be listed before the registrar for consideration and decision.

## **29. Applications for disclosure of documents**

29.1. The Court will not make an order for disclosure of documents (disclosure) 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:

- (a) the reason why disclosure is necessary for the resolution of the real issues in dispute in the proceedings;
- (b) the classes of documents in respect of which disclosure is sought; and
- (c) the likely cost of such disclosure.

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

29.6. In the Small Claims Division, parties may issue a Notice to Produce to Court in accordance with [UCPR 34.1](#)

## **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:

- (a) the areas in which expert evidence is required;
- (b) whether they can agree on a single expert in relation to each area of expertise or they wish to retain their own expert; and
- (c) the field of expertise to be nominated when leave is sought.

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, 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 subsequently 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 ten 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:

- (a) the matters they agree on;
- (b) the matters where there is no agreement; and
- (c) the reasons for any disagreement.

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.

32.6. All evidence is to be given concurrently unless leave is granted by the Court.

### **33. Small Claims Division – single expert**

33.1. If the Court gives leave to adduce expert evidence in the Small Claims Division, the following directions are taken to have been made unless the Court otherwise orders:

Within 14 days of leave being given to adduce expert evidence, the parties must:

- (a) agree on the single expert witness to be retained; and
- (b) obtain that expert's agreement to provide the evidence.

- 33.2. If the parties cannot agree on a single expert witness and obtain that expert's concurrence within 14 days, the parties must immediately notify the Court, which will then appoint a single expert.
- 33.3. Within 14 days after the single expert witness has been selected or appointed, the parties must:
- (a) 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; and
  - (b) brief the expert in the agreed manner.
- 33.4. 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.
- 33.5. The single expert witness must provide the report to the parties within 21 days from the date on which the single expert witness was briefed.
- 33.6. A party may put a maximum of five written questions to the single expert for the purpose of clarifying matters in the report. The expert must answer the questions within 14 days.
- 33.7. The single expert witness may be requested to provide a supplementary report that takes into account any new or omitted factual material.
- 33.8. Any party may, subject to exceptions and [s 177 of the Evidence Act 1995](#), seek the Court's leave to:
- (a) tender a single expert witness report(s); and/or
  - (b) cross-examine a single expert witness.
- 33.9. A single expert's fee for preparation of the report and any supplementary report, and for attending court (if they are 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.
- 33.10. A single expert witness may apply to the Court for directions.

#### **34. Tendering expert reports at the trial**

- 34.1. Subject to [s 177 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; and
  - (b) if the Court grants leave, 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 trial.
- 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) serving that same report back on the party who commissioned the report; and
  - (b) whether it is necessary to take steps to have that expert witness available for cross-examination at the trial.

## PART F – Costs

### 35. Proportionality of costs

- 35.1. The Court will seek to ensure that party / party costs (including disbursements) 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 practitioner / client costs (including disbursements), both paid and owing up to and including the first day of trial;
  - (b) the estimated future practitioner / client costs (including disbursements) up to the completion of the trial;
  - (c) any expenses paid or payable to an expert witness or if those expenses are not known, an estimate of the expenses; and
  - (d) an estimate of the party / party costs (including disbursements) that may be payable by the party if 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 this clause.

### 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 (on the same day where possible) 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 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 (e.g., copies of time ledger print outs, file notes and memoranda);
  - (c) a copy of the written notice as required by clause 35.3, 'Proportionality of costs'
- 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, the Court 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 trial, they can file consent orders without the need for a further attendance at court.
- 36.6. LCR Part 2 ([r 2.9](#)) 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 developed guidelines for calculating the amount of costs that can be awarded in 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) - \$81.00 (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 an indemnity basis in appropriate cases.

## **PART G – Maximum Costs Orders in the General Division**

### **38. Claims of \$50,000.00 or less.**

- 38.1. This clause applies to all proceedings commenced after 25 June 2022, where the amount of the claim is \$50,000.00 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 \$20,000.00 and \$50,000.00, 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 \$20,000.00 and \$50,000.00, 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 \$2,500.00.
- 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 until two weeks prior to the first review date, unless the Court orders otherwise.
- 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; and
- (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 this clause 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 in the General Division**

39.1. Clause 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 \$20,000.00 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. Pre-judgment Interest**

40.1. 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:

- (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.

NOTE: The prescribed rate at which interest is payable *after* judgment is set by [r 36.7 UCPR 2005](#).

# 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 listed as approved by the Chief Magistrate.

41.2. In this Part:

- (a) 'court date' means a date on which the proceeding is listed for case management.
- (b) 'delegate' means a managing lawyer or employed support staff member who is registered as a delegate by the legal practitioner on the record via the ORW.
- (c) 'OLC' means Online Court.
- (d) 'ORW' means Online Registry Website.
- (e) '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.
- (f) 'practitioner' means legal practitioner.

41.3. The purpose of this Part 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 the 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. The 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 any 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 are binding. Any undertakings given in the OLC 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.

42.8. When the registrar makes an order in the OLC an (automatic) email will be sent to all parties.

## 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) the adjournment of the proceeding;
  - (b) any interlocutory orders pursuant to [Part 6 of CPA](#);
  - (c) the fixing of a hearing date; and
  - (d) the 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; and
  - (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 the OLC must be supported with reasons.
- 45.3. Any communication referred to in this clause 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 using 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 Rules 2.7\(7\)](#).

#### **46. Costs in the Online Court**

- 46.1. On occasion the registrar may determine that the parties are required to attend in person on a court date and will make orders accordingly.
- 46.2. 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.
- 46.3. 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

#### **47. Consent Orders**

- 47.1. 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.
- 47.2. Any terms agreed between the parties should be included as orders sought in the request.

#### **48. Documents**

- 48.1. Documents may be attached as part of a request or attached to a message. Any attached documents will be viewable by all parties and the registrar.
- 48.2. Where parties require documents to be formally filed, they should do so via the ORW and not via the OLC.

#### **49. Obtaining copy of the Online Court Record**

- 49.1. 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.
- 49.2. 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.



*Pete Johnstone*  
JUDGE JOHNSTONE  
CHIEF MAGISTRATE

#### **Amendment History**

*This Practice Note replaces former versions of Practice Note Civ 1 (24 May 2019 and prior) 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 NSW

### General Division - Standard Directions

Practice Note Civ 1  
(applicable only to matters to be heard by the Court)

1. In order to advance the dictates of justice, the evidence-in-chief of any witness shall be given by affidavit or written statement. The parties should note that [r 35.2 of the Uniform Civil Procedure Rules 2005 \(NSW\) \(UCPR\)](#) 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.
2. The Court will allocate a hearing date and a review date at the call-over.
3. The Plaintiff / Cross-Defendant is to serve any evidence on which it will seek to rely on or before the following dates: -
  - (a) Affidavits or written statements of witnesses, together with a chronological and paginated bundle of all relevant documents\* by \_\_\_\_\_  
[6 weeks before the review date]
  - (b) Any expert report(s), in accordance with [Pt 31 Div 2 UCPR](#), in respect of which leave has been granted by the Court, by \_\_\_\_\_  
[6 weeks before the review date]
4. The Defendant / Cross-Claimant is to serve any evidence on which it will seek to rely on or before the following dates: -
  - (a) Affidavits or written statements of witnesses, together with a chronological and paginated bundle of all relevant documents\* by \_\_\_\_\_  
[6 weeks before the review date]
  - (b) Any expert report(s), in accordance with [Pt 31 Div 2 UCPR](#), in respect of which leave has been granted by the Court, by \_\_\_\_\_  
[6 weeks before the review date]
5. 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.
6. Other than provided for in paragraph 7 below, parties must not file their evidence prior to the hearing unless the Court otherwise orders.
7. A parties' single expert report or a joint report prepared after a conclave (whether held either in person or remotely) between a number of experts is to be filed with the Court prior to the hearing.
8. Each party or their legal representative must appear at the review and file a written summary of the case, including a reference to any relevant case law or statute.

9. The parties are to engage in meaningful discussions with respect to any objections to each other party's affidavits or written statements (including any expert's statements) as soon as practicable.
10. In the event that a party continues to object, after discussions with the other parties, to the content of another party's affidavits or written statements (including any expert's statements), the objecting party must serve a list of objections on the other party no later than 14 days before the hearing date, and which is to contain the following information: -

<b>Name of Deponent Date of Affidavit / Statement</b>	<b>Paragraph Number</b>	<b>Basis of Objection</b>	<b>Ruling (for court use only)</b>

11. The parties must discuss whether they agree about any facts and issues that are in dispute, following which if the parties: -
  - (a) Agree about any facts and issues, then the Plaintiff must file a Joint Statement of Agreed Facts and Issues at least 7 days before the hearing; or
  - (b) Do not agree about the facts and issues, then each party must file a Statement of Agreed Facts and Issues at least 7 days before the hearing.
12. 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 hearing unless the Court is satisfied that the dictates of justice are advanced by allowing the defaulting party to do so.
13. 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.
14. All cases should be ready to proceed on the hearing date.

\* 'Document' has the same meaning as in the Dictionary to the *Evidence Act 1995* (NSW). It includes, but is not limited to, 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 of NSW**  
**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)

<b>Parties:</b>			
-v-			
<b>Case Number(s):</b>			
<b>Hearing date:</b>			
Estimated time for examination:	Estimated Time for Examination in Chief	Estimated Time for Cross Examination:	Total Time Witness Required:
<b>Plaintiff - Witnesses</b>			
1.			
2.			
3.			
4.			
5.			
Total:			
<b>Defendant - Witnesses</b>			
1.			
2.			
3.			
4.			
5.			
Total:			
<b>Total estimated of length of hearing:</b>			
Is an interpreter required: * Onus on 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 issued and complied with:	Yes / No		
Checked availability of witnesses for hearing date:	Yes / No		
Do parties consent to dispense with Review:	Yes / No		
Plaintiff’s Solicitor / Counsel	Contact no:	Signature:	
Defendant’s Solicitor / Counsel	Contact no:	Signature:	

# Annexure C

## Local Court of NSW

### 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 the Court, which must be indicated at the time of lodgement. 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**  
**Local Court of NSW**  
**Pre-trial Review Sheet**

Plaintiff:

Case 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

## Local Court of NSW

### 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 remotely attend, make comments and present arguments and provide final submissions on the evidence.

Note: "Remote appearance" or (in context) "remotely" or "remote means" refers to appearances either via Audio Visual Link, Telephone, or other remote means.

6. If a party fails to attend the hearing, the Court may strike out the statement of claim or defence.

**Signature**  
**[Date]**