



Local Court of New South Wales

## **Practice Note 1 of 2005**

ISSUED: 15 August 2005

AMENDED: 16 February 2007

**Re-issued pursuant to section 27 Local Court Act 2007**

**Issued pursuant to section 15 of the *Civil Procedure Act 2005 (CPA)***

### **CASE MANAGEMENT OF CIVIL PROCEEDINGS (GENERAL DIVISION)**

1. This Practice Note revokes Practice Note 2/2001.

#### **2. Objective**

**2.1** The overriding purpose of the Civil Procedure Act 2005 (CPA) is to facilitate the **just, quick and cheap resolution of the real issues** in the proceedings: (s.56 (1) CPA).

**2.2** The Court's Time Standards aim to finalise **90% of civil proceedings within 6 months of commencement and 100% within 12 months.**

**2.3** 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. Parties must plan to meet these Time Standards.

**2.4** A party to civil proceedings is under a duty to assist the Court to further the overriding purpose of the CPA 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).

**2.5** The just, quick and cheap resolution of the real issues in proceedings requires that proceedings are expeditiously and properly prepared by the parties.

#### **3. Case Management**

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

#### 4. Dismissal of Proceedings on the Court's own motion

If within 9 months after a statement of claim has been filed:

- (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 may be **on the Court's own motion and order dismissed** (Rule 12.9(2)).

No such order is made if there are any Notices of Motion or other applications in the proceedings that are yet to be determined (Rule 12.9(4))

The order may be set aside upon application (Rule 36.16(2)(b)). Further, an order dismissing proceedings generally will not bar the commencement of fresh proceedings.

#### 5. No proceedings are ever stood over generally. Section 66(1) CPA.

#### 6. Representation

**6.1** Where there is a legal practitioner on the record for a party, a legal practitioner with full knowledge of the proceedings must represent that party at the Call-over and Review. That legal practitioner must have sufficient instructions to enable the Court to make all appropriate orders and directions.

**6.2** It is therefore generally **inappropriate** for parties to be represented by **agents or clerks**.

**6.3** The court has a wide discretion with respect to costs. It should be anticipated that non-compliance with directions and orders may result in adverse costs orders.

#### 7. Management of the Court Lists

**7.1** On the filing of the first defence (the defence filing date), but subject to paragraph 7.2 of this Practice Note, the proceedings will be given a first Call-over **within six weeks** of the defence filing date. Standard Directions will be served by the Court on service of the defence [Rule 10.8(3)].

**7.2** Where on the filing of a defence, the defendant also files an application for the proceedings to be transferred to another Local Court, the proceedings will be given a first Call-over date **within six weeks** of the defendant's application for transfer of proceedings being determined [s151 CPA].

### 7.3 The first Call-over

7.3.1 The first Call-over shall be conducted by a Magistrate or Registrar (the Court). The Court may, by order, give directions as the Court thinks fit for the speedy determination of the real issues between the parties to the proceedings. Such orders may include:

- (i) that the parties comply with the Standard Directions
- (ii) allocating a date for return of subpoenas
- (iii) an order for the preparation and filing of the agreed list of exhibits that are page numbered and indexed
- (iv) such other directions with respect to the conduct of the proceedings as it considers appropriate
- (v) any other matter mentioned in Part 6 CPA.
- (vi) a referral of the proceedings for mediation by a mediator (s26 CPA)
- (vii) a referral of the proceedings for determination by an arbitrator (s38 CPA)
- (viii) directions for the calling of expert witnesses pursuant to Division 2 of Part 31 of the UCPR.

7.3.2 At the first Call-over the Court may fix a date for trial and for review but where the Court is unable to do so in accordance with the dictates of justice the Court may adjourn the proceedings to a second Call-over which **must be held within 28 days** of the first Call-over.

### 7.4 The Second Call-over

7.4.1 At the second Call-over, the Court shall

- (i) Fix a date for trial. **Trial dates will be fixed to give effect to the overriding purposes of the CPA – the just, quick and cheap resolution of the proceedings and the Court’s Time Standards**
- (ii) Fix a Review date **not more than 42 days** prior to the trial date
- (iii) Make orders in accordance with paragraph 7.3.1 of this Practice Note

7.4.2 Where the proceedings at the second Call-over are before a Registrar and the parties are unable to take a trial date, the Registrar **must** refer the proceedings for a **Directions Hearing** before a Magistrate which is to be held **not more than 14 days** after the date of the second Call-over.

### 7.5 The Review

The Magistrate at the Review shall ensure that the proceedings are ready for trial and the Court’s directions have been complied with. If the Court’s directions have not been complied with, the Court may make orders including dismissing the proceedings, striking out a defence or cross claim, directing a party to pay the whole or part of the costs of another party or making such orders as it considers appropriate (s61(3) and s61(4) CPA).

## 7.6 Arbitration

7.6.1 Suitable proceedings may be finalised through mediation or arbitration. A referral by the Court to mediation or arbitration can be considered at the **first or second Call-over**. Proceedings will generally only be considered for arbitration if they are property damage claims arising out of motor vehicle accidents or other uncomplicated proceedings estimated to take 3 hours or less at hearing.

7.6.2 Where proceedings are referred to arbitration and a request for re-hearing is lodged the parties will be advised of a Call-over date to be held **within 28 days** of the filing of the request for re-hearing. At the Call-over, the Court will make orders in accordance with paragraph 7.3.1 of this Practice Note. The Call-over of proceedings to be reheard shall be pursuant to Paragraph 7.4 of this Practice Note (a second Call-over) and **shall not** be adjourned by the Court to a further Call-over.

## 8. Subpoenas

The parties must issue subpoenas as early as possible so that documents can be produced and inspected and are available for the proper preparation of the case, including submission to experts.

## 9. Motions

Parties must file any motions as soon as practicable. A motion will be allocated a hearing date in the general motions list on the first available date and the parties should be ready to argue the motion on that date.

## 10. Vacation of Trial Date

**10.1** Any application to vacate a trial must be by Notice of Motion and must be made **not less than 21 days** prior to the allocated trial date.

**10.2** Applications to vacate a trial **within 21 days** of the trial date on the basis of unforeseen circumstances (for example on the ground of illness) must be made as soon as practicable and not later than the next working day after a party becomes aware of the unforeseen circumstances. If the trial is within 21 days the party seeking to vacate a trial should not wait to obtain the consent of the other party before approaching the Court.

## 11. Expert Evidence

11.1 So far as is practicable to do so without compromising the interests of justice, expert evidence is to be given on an issue in proceedings by a single expert engaged by the parties or appointed by the Court.  
R 31.17(d)

**11.2** Parties must seek directions from the Court before calling any expert witness.

11.2.1 Directions may be sought at Call-over before a Magistrate. If a Call Over is held before a Registrar, the matter is to be referred to a Magistrate for directions.

11.2.2 If, after Call-over, a party decides that it is necessary to call an expert witness, he/she may apply to the court for directions by notice of motion or pursuant to liberty to restore.

11.2.3 It is the responsibility of the parties or their legal representatives to inform the Court that expert evidence will be called.

11.3 The Court may at any time give such directions as it considers appropriate in relation to the use of expert evidence in proceedings.  
Rule 31.20

G. L. Henson  
CHIEF MAGISTRATE



**Local Court of New South Wales  
GENERAL DIVISION  
STANDARD DIRECTIONS**  
(Pursuant to Practice Note 1 of 2005)

**COURT APPEARANCES**

**DATE**

**TIME**

**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)**

1. Each party shall serve upon all other parties copies of written statements or affidavits of the intended evidence of all witnesses, together with copies of any annexures, reports or other documentation (all which should be numbered) intended to be relied upon, on a day at least 14 days prior to the Review date of this matter (being a date at least 42 days prior to the day fixed for trial).
2. Each party or their legal representative is directed to attend on the Review date allocated by the Court. On the Review date each party shall file a written summary of the case, including a reference to any relevant case law or statute.
3. The Plaintiff shall prepare and file a statement of agreed facts and issues 7 days prior to the date fixed for hearing.
4. Unless there is more than one defendant, each party must prepare four copies of all statements or affidavits and other documents. In the case of each additional party, one additional copy should be provided.
5. Where a written statement or affidavit of a witness has not been filed and exchanged, evidence may not be admitted, unless the non-complying party satisfies the Court that it is in the interests of justice to do so.
6. 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.
7. Where a legal practitioner acts as agent for a party he/she must forward a copy of the direction to the principal legal practitioner immediately.

Parties should acquaint themselves with Practice Note 1 of 2005 which can be located at [http://www.lawlink.nsw.gov.au/lc.nsf/pages/practice\\_collections](http://www.lawlink.nsw.gov.au/lc.nsf/pages/practice_collections)