



Local Court of New South Wales

Practice Note 2 of 2007

Amended 1st June 2008

Re-issued pursuant to section 27 Local Court Act 2007

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

1. That so far as this Practice Note is inconsistent with Practice Note 1 of 2000, Practice Note 1 of 2000 is superseded.

2. This Practice Note commences on 1st March 2007.

3. Objectives and Purpose

3.1 The purpose of this Practice Note is to indicate a limitation on the maximum amount of costs that will generally be awarded in proceedings for liquidated claims to which this Practice Note applies.¹

3.2 Where the amount claimed is \$20,000 or less the Court's discretion as to costs in proceedings will in general terms be exercised so that the maximum amount of costs awarded in respect of the proceedings, after the first defence is filed, is limited pursuant to Rule 42.4 of the Uniform Civil Procedure Rules, 2005 (UCPR). Maximum costs should NOT be considered as the standard amount to be awarded. Costs will be subject to agreement or assessment in appropriate proceedings, however, the amount of costs should not exceed the maximum unless the court otherwise orders.

3.3 Costs mentioned in this Practice Note do not include general disbursements but do include Counsel's fees.

4. Limitation on Amount of Costs to be Awarded.

4.1 This Practice note applies to proceedings in the General Division in which the amount claimed does not exceed \$20,000 and to all

¹ See Part 6 of Civil Procedure Act, 2005

matters transferred from the Small Claims Division to the General Division.

4.2 Unless the court otherwise orders, this Practice Note applies to proceedings no matter when commenced where the first defence is filed or (in the case of a matter commenced in the Small Claims Division) where the matter is transferred from the Small Claims Division to the General Division, after the commencement of this Practice Note.

4.3 Unless the Court in a particular case determines otherwise, the discretion of the Court as to costs incurred after the first defence is filed will be exercised as if a maximum costs order under r 42.4 of the Uniform Civil Procedure Rules 2005 ("the UCPR") had been made in the proceedings at the time of filing of the first defence in the terms set out below ("the maximum costs order"). Costs up to and including the filing of the first defence will not be included in the amount specified in the maximum costs order, but may be ordered in addition to that amount.

4.4 **Rule 42.4 Maximum Costs Order.**

The discretion of the court to award costs shall be exercised so as not to exceed the following amounts:

- (a) where the plaintiff succeeds – 25% of the amount awarded by the court
- (b) where the defendant succeeds – 25% of the amount claimed by the plaintiff.

5. Maximum Costs Order for Matters Transferred From the Small Claims Division to the General Division

5.1 The Rule 42.4 Maximum Costs Order for matters commenced in the Small Claims Division and subsequently transferred to the General Division is as follows: -

- 1. Pursuant to Rule 42.4 of the UCPR, the maximum costs which may be recovered by a successful party shall be fixed at \$2,500.

6. Variation of Rule 42.4 Maximum Costs Order

6.1 Any party seeking to vary the Rule 42.4 Maximum Costs Order or such other Rule 42.4 Orders as may be in force may make application at any time but not later than two weeks prior to the first Review date.

6.2 An application for a variation of the Rule 42.4 Maximum Costs Order or such other Rule 42.4 order as may be in force: -

6.2.1 must be made by way of notice of motion;

6.2.2 must be served by the applicant on each party who may be affected by the application no later than five days before the return date of the motion.

6.2.3 the notice of motion must be supported by an affidavit containing information as to the importance of the subject matter of the proceedings and the complexity of the proceedings (section 60 CPA);

6.2.4 the supporting affidavit must include an estimate of the costs of the party on an ordinary basis as at the date of the application, and an estimate of the costs on an ordinary basis which will be incurred between the date of the application and the completion of the trial; and

6.2.5 the supporting affidavit must NOT annex a bill of costs of the party making the application.

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

6.3 A party who may be affected by an application for variation of the Rule 42.4 Maximum Costs Order may file at the registry and serve on all other active parties an affidavit responding to the notice of motion. That affidavit may specify an amount sought as an alternative maximum costs order.

6.4 The Court will determine an application for a variation of the Rule 42.4 Maximum Costs Order up until the time of first Review and may make the following orders: -

1. An order that the Rule 42.4 Maximum Costs Order shall continue to apply
2. An alternate Rule 42.4 order
3. Such order as the court deems appropriate.

7. Court's Discretion as to Indemnity Costs

7.1 This Practice Note does not affect the power of the Court to exercise its discretion to depart from the orders specified herein or make orders for indemnity costs in appropriate cases.

8. Maximum Costs Orders where Cross Claims filed

- 8.1 Where, in any proceedings to which this Practice Note applies, a defendant seeks to cross claim against the plaintiff or any other person, the successful party shall be entitled to a costs order as if the proceedings had been separately commenced.

G.L. Henson
Chief Magistrate