



Local Court of New South Wales

Practice Note 6 of 2007

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

Re-issued pursuant to section 27 Local Court Act 2007

1. This Practice Note applies to all matters listed for Review on or after 3 September 2007.
2. This Practice Note applies to proceedings in the General Division of the Local Court where the issue or one of the issues to be determined is the quantum of damages arising or claimed to arise as a result of a motor vehicle accident.
3. To the extent that this Practice Note is inconsistent with Practice Note 1 of 2005, 2 of 2007 or Practice Note 3 of 2007 this Practice Note shall apply.
4. **Objectives and Purpose**
 - 4.1 The object of this Practice Note is facilitate the just, quick and cheap resolution of proceedings where an issue arises concerning the cost of repairs of the damage sustained to a motor vehicle in a motor vehicle accident (hereinafter referred to as "*the Cost of Repairs*").¹
 - 4.2 The first purpose of this Practice Note is to ensure, from an early point of time, the Court and all parties are cognizant of the amount in dispute between the parties concerning the Cost of Repairs.
 - 4.3 The second purpose of this Practice Note is to provide procedural certainty as to the maximum costs generally awarded in proceedings to which this Practice Note applies having regard to the proportionate, importance and complexity of the subject-matter in dispute.²

¹ Section 56 Civil Procedure Act, 2005

² Section 60 Civil Procedure Act, 2005

5. Procedure at the first call over

- 5.1 The parties shall advise the Court that the proceedings relate to a motor vehicle accident and that liability and/or the quantum of damages is in issue.
- 5.2 The parties shall advise the Court as to the amount claimed by the plaintiff as representing the Cost of Repairs; the amount claimed by the defendant as representing the Cost of Repairs; and the amount of the Cost of Repairs remaining in dispute (hereinafter referred to as "*the Disputed Cost of Repairs.*")
- 5.3 The Court may require the advice to be given by the parties as referred to in 5.2 to be given in writing and signed by the parties or their legal representatives

6. Standard Directions as to Expert Witness Evidence

- 6.1 That unless the Court otherwise orders, upon being satisfied the proceedings are proceedings to which this Practice Note applies and that the parties have satisfied the provisions contained in paragraph 5.1 and 5.2 herein, the following Direction, in addition to the Standard Directions made pursuant to Practice Note 1 of 2005 shall be made.
- 6.2 Each witness to be called to give expert evidence for each party is required to confer ("*the Conference*") at least twenty eight days prior to the Review Date.
- 6.3 That as a result of the Conference the witnesses to give expert evidence on quantum of damages are required to state with precision in writing in the form of a Scott Schedule, no later than fourteen days prior to the Review Date, the points of agreement and differences between them.
- 6.4 If the witnesses to be called by the parties to give expert evidence do not agree on all issues between them, the parties will, before the Review, agree on a "Parties Single Expert"³ to report on the points of difference between the parties.
- 6.5 In the absence of agreement between the parties of the appointment of a "Parties Single Expert", the Court at the Review will appoint an expert⁴ from a list to be provided by the parties, to inquire into and report of the points of difference between the parties.

³ Subdivision 4 of Part 31 of the Uniform Civil Procedure Rules 2005

⁴ Subdivision 5 of Part 31 of the Uniform Civil Procedure Rules 2005

- 6.6 That unless the Court otherwise orders, there will be a maximum of one hour allowed for the Cross Examination of the Parties Single Expert or the Court Appointed Expert by each party.
- 6.7 A maximum of thirty minutes will be allowed for each party to address on the evidence before the Court.

7. Maximum Cost Orders where liability is not in issue

- 7.1 This paragraph applies to proceedings where liability has been admitted and the only issue for determination between the parties is the Cost of Repairs.
- 7.2 For the purposes of this Practice Note, the term “Maximum Costs Order” means an order made in accordance with Rule 42.4 of the Uniform Civil Procedure Rules 2005 that the maximum costs a party may be required to pay another party shall not exceed an amount for solicitors and/or barristers fees calculated in accordance with this rule plus, where applicable, reasonable disbursements, witness expenses and expert fees.
- 7.3 For the purpose of determining the Solicitors and/or Barristers fee component of the Maximum Cost Order as hereafter provided the following definitions shall apply: -

PA. means the *amount claimed by the Plaintiff* as representing the Cost of Repairs.

DA. means the *amount claimed or accepted by the Defendant* as representing the Cost of Repairs.

MACA. means the *mean average of the claimed amount* and is calculated by the following formula, $(PA+DA)/2 = MACA$

DC. means the amount of *the disputed cost of repairs* calculated by the formula, $PA - DA = DC$

MADC means the *mean average of the disputed cost of repairs amount* and is calculated by the following formula, $DC/2 = MADC$

CDA. means the *Court Determined Amount* which is the amount determined by the Court as representing the Cost of Repairs.

BASE AMOUNT means the amount of \$2,500.00 or otherwise an amount which is 25% of the amount of *the disputed cost of repairs*, whichever is the greater.

- 7.4 Where the amount determined by the Court as representing the Cost of Repairs of the quantum of damage is equal to the amount claimed or accepted by the defendant or less than the *mean average of the claimed amount*, a *Maximum Costs Order* shall be made in favour of the defendant.
- 7.5 Where the amount determined by the Court as representing the cost of repairs of the quantum of damage is equal to the *mean average of the claimed amount*, then unless the court otherwise orders, no order as to costs will be made.
- 7.6 Where the amount determined by the Court as representing the cost of repairs of the quantum of damage is greater than the *mean average of the claimed amount*, a *Maximum Costs Order* shall be made in favour of the plaintiff.
- 7.7 Where the defendant is entitled to the benefit of the *Maximum Costs Order*, the Solicitors and/or Barristers component of the *Maximum Costs Order* shall be calculated in accordance with the following formula.

$$\frac{(\text{MACA} - \text{CDA})}{\text{MADC}} \times \text{BASE AMOUNT} = \text{SOLICITOR/BARRISTER COMPONENT}$$

- 7.8 Where the plaintiff is entitled to the benefit of the *Maximum Costs Order*, the Solicitors and/or Barristers component of the *Maximum Costs Order* shall be calculated in accordance with the following formula.

$$\frac{(\text{CDA} - \text{MACA})}{\text{MADC}} \times \text{BASE AMOUNT} = \text{SOLICITOR/BARRISTER COMPONENT}$$

8. Maximum Cost Orders where liability and quantum are in issue

- 8.1 This rule applies to proceedings where liability has not been admitted and the court is required to make a determination both as to liability and as to the quantum of damages sustained to the motor vehicle in a motor vehicle accident.

8.2 The Court shall make in addition to the Maximum Costs Order calculated in accordance with Paragraph 7 a Costs Order in accordance with Rule 8.3 or 8.4 as the case may be.

8.3 Where the defendant has not admitted liability and the Court has made a finding in favour of the plaintiff on the issue of liability, then in addition to any Maximum Costs Order made in accordance with Paragraph 7, the Court shall order that the defendant pay to the plaintiff the sum of \$1,500.00 for any additional costs and disbursements incurred in proving the issue of liability.

8.4 Where the defendant has not admitted liability and the Court has made a finding in favour of the defendant on the issue of liability, then in addition to any Maximum Costs Order made in accordance with Paragraph 7, the Court shall order that the plaintiff pay to the defendant the sum of \$1,500.00 for any additional costs and disbursements incurred in defending the issue of liability.

9. Court's Discretion as to Indemnity Costs

9.1 The 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.

G.L. Henson
Chief Magistrate