



**Local Court of New South Wales**

## **Practice Note 2 of 2005**

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

### **CASE MANAGEMENT OF PROCEEDINGS IN THE SMALL CLAIMS DIVISION OF THE LOCAL COURT**

**1. This Practice Note applies to all matters in the Small Claims  
Division of the Local Court in New South Wales.**

**2. This Practice Note commences on 15<sup>th</sup> August 2005.**

#### **3. Objective**

- 3.1 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).
- 3.2 Proceedings in the Small Claims Division are to be conducted with as little formality and technicality as the proper consideration of the proceedings permit.
- 3.3 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.
- 3.4 The Court by this Practice Note seeks to give effect to the overriding purpose of the Act and to the finalisation of all civil proceedings within the Court's Time Standards.
- 3.5 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).
- 3.6 The just, quick and cheap resolution of the real issues in proceedings requires that proceedings are expeditiously and properly prepared by the parties.
- 3.7 The rules of evidence do not apply to proceedings being heard in the Small Claims Division.

#### **4. Case Management**

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

#### **5. Dismissal**

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 are **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))

#### **6. Directions**

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

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

#### **8. Preparing for Trial**

A 'formal trial', that is, the normal adversarial trial where oral evidence is taken on oath, and witnesses cross-examined is not available in the Small Claims Division. Where the court is of the opinion that the issues likely to arise in the proceedings are so complex or difficult as to law or fact, or that the action or cross-claim is of such importance that it should not be heard in the Small Claims Division, the Court may order its transfer to the General Division. Such an order may be made at any time before judgment on the court's own motion or on the application of any of the parties.

#### **9. Pre-Trial Review**

- 9.1 On the filing of the first defence (the defence filing date), the proceedings will be given a Pre Trial Review Date within six weeks of the defence filing date.
- 9.2 The Case Management Order given by the Magistrate, Assessor or Registrar at the Pre Trial Review shall be in accordance with the Case Management Orders forming part of this Practice Note.
- 9.3 In determining whether a direction may be given at the Pre Trial Review that a witness attend the trial of the proceedings to be orally examined, the Magistrate, Assessor or Registrar will have regard to the particular circumstances of the case, including the amount involved and whether there is a real issue as to creditability or a significant conflict in the evidence.

## 10. Witnesses

- 10.1. There is no right to call witnesses to give evidence, to give evidence on oath/affirmation or to cross-examine a party or witnesses on oath/affirmation or otherwise in the Small Claims Division.
- 10.2. Where a direction has **not** been given at the Pre-trial review by the Magistrate, Assessor or Registrar for the attendance of any witness at the trial of the proceedings, the proceedings will be heard and determined by each party tendering the written statements of witnesses together with any other relevant documentation or material in support of the party's case. There will be no right to examine or cross-examine any witness. Parties will, however, be entitled to make comments, present arguments and make final submissions on the evidence.
- 10.3. Where a direction **has been** given at the Pre-trial review by the Magistrate, Assessor or Registrar, that a witness attend for cross-examination, the proceedings will be heard and determined on the oral evidence and the written statements and other documents and materials which have been tendered. Submissions on the evidence will also be allowed.
- 10.4. The procedure at the trial of the proceedings in the Small Claims Division will be determined by the Magistrate or Assessor as he or she thinks fit.

Judge D Price  
CHIEF MAGISTRATE



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:

**Case Management Order:**

The hearing will be conducted in a way which gives each party the opportunity to properly present his or her case, and, where necessary, test the other party's case, but without unduly prolonging the hearing or rigidly applying rules or procedures. The rules of evidence will not apply and the Magistrate or Assessor who hears the case will determine the procedure at the hearing.

Each person who has something relevant to say about the matter should prepare a "witness statement" in writing. Each party shall exchange copies of written statements simultaneously and file a copy in the Local Court registry **no later than 14 days before the hearing**.

No witnesses need come to court unless the Magistrate, Assessor or Registrar who conducted the Pre-Trial Review gave a direction that a witness should attend to be cross-examined. If no such direction has been given, the case will be heard and determined on the written statements of the witnesses, and any other documentary evidence or material produced at the hearing.

If the Magistrate, Assessor or Registrar gave a direction at the Pre-Trial Review that a particular witness should attend for the purpose of cross-examination, that witness must attend. Otherwise, his or her statement may not be admitted, or no weight may be attached to its contents. If you think that the witness will not attend court voluntarily, please attend the court office well in advance of the hearing in order to arrange for the issue of the relevant process.

At the hearing, the parties or their legal representatives should be in attendance to make comments, present arguments and to make final submissions.

If you or your opponent do not file and exchange the statements of relevant witnesses, this may result in the action, defence or cross claim being dismissed or struck out, and/or an order for costs may be made against the defaulting party.

*If you are uncertain about any aspect of this Notice or the procedures to be followed in preparing your case or at the hearing, you should seek advice prior to the hearing date from the Chamber Registrar, LawAccess or a legal practitioner.*

**Magistrate/Assessor/Registrar**  
**(Date)**

Parties should acquaint themselves with Practice Note 2 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)