

**Schedule of amendments to Practice Note Civ 1
(Approved by Chief Magistrate)
(Proposed commencement: 3 June 2024)**

Current	New	Justification
N/A	4.2. Parties are reminded that s 56 of the CPA requires each matter be conducted in a way that is just, quick and cheap. Parties are required to ensure that all evidence is relevant, accurate and not duplicative.	To re-iterate principles for conduct of civil matters and expectations for nature of evidence – see e.g. Bevan v Bingham & Ors [2023] NSWSC 19
8.2. The Court may refer matters to mediation with or without the consent of the parties.	8.2. The Court may refer matters to mediation with or without the consent of the parties. However, matters will only be referred to mediation without the consent of the parties following the service of each party’s evidence.	As proposed by the LCO Civil Liaison Committee, accepted by the Chief Magistrate and announced in the 2022 Annual Review
N/A	8.3. If the Court refers the parties to mediation without their consent, or the parties agree to participate in mediation but do not wish to engage a private mediator at their own expense, the Court may make arrangements for a mediation to be held.	To facilitate use of Law Society’s pro bono mediation scheme.
N/A	8.4. The Court will not vacate a date on which proceedings are listed for hearing only to enable parties to participate in mediation.	To ensure hearing dates are maintained and avoid incurring undue delays for mediation, and pursue guiding principles at ss 56-60 of the <i>Civil Procedure Act 2005</i>
13.6. If legally represented, the parties are to exchange any objections to statements or affidavits at least 14 days prior to the trial.	13.6. If legally represented, the parties are to exchange any objections to statements or affidavits at least 14 days prior to the trial. Objections must not be raised at trial where this requirement has not been complied with, unless the Court orders otherwise.	To ensure efficient conduct of hearings and compliance with standard directions.
16.1. Unless the Court otherwise orders, the review will be listed approximately eight weeks before the trial date.	16.1. The Court may list a matter for review no less than eight weeks before the trial date.	To enable mediation/negotiation to take place
16.2. Where the parties are legally represented, the legal representative for each party	16.2. Where the parties are legally represented, the legal representative for each party	To ensure matters listed for hearing are capable of proceeding well in advance, and

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must file and serve a completed and signed civil listing advice (see Annexure B) no later than 2 days prior to the review date.	must file and serve a completed and signed civil listing advice (see Annexure B) no later than eight weeks prior to the hearing date.	for hearing dates to be otherwise utilised where possible if matters not proceeding as listed
N/A	16.3A. If there is non-compliance with directions a party may seek to have the matter relisted without the need for a notice of motion. This request shall be made in writing to the Court via email.	To ensure matters can be re-listed expediently for case management, and pursue guiding principles at ss 56-60 of the <i>Civil Procedure Act 2005</i>
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;	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 10 days prior to the trial date;	To extend the time in which application to appear remotely may be made and make consistent with Annexure C
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.	21.1. Proceedings in the Small Claims Division will be conducted with as little formality and technicality as the proper consideration of the matter permits: s 35(2) LCA.	To clarify language
N/A	25.9. Where a party is legally represented, the use of leading questions should be avoided where practicable in the preparation of witness statements, particularly on important or contentious issues.	As reminder to ensure evidence accords with actual recollection of events – see e.g. Gan v Xie [2023] NSWSC 163
N/A	25.10. Any witness statement relied on by a legally represented party: (a) is to be prepared in the witness’ own words; (b) is only to include matters of fact of which the witness has personal knowledge and otherwise should disclose how the knowledge was acquired; (c) is only to include facts that are in dispute and need to be proved at trial	See Gan v Xie [2023] NSWSC 163 at [116] and surrounding, and noting there is no XXN in small claims matters

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	<p>relevant to the issues in dispute;</p> <p>(d) is to include a certification that the statement sets out the witness' personal knowledge and recollection, that they have not been encouraged to provide information by anyone that is not within their knowledge and that they understand that their statement is to be used as evidence in court proceedings;</p> <p>(e) is to include a certification by the legal practitioner that the statement has been prepared in accordance with the practice note and that these requirements have been explained to the witness prior to them making and signing their statement; and</p> <p>(f) is to, where recounting conversations, record those conversations in a form that corresponds with the nature of the witness's actual memory of the conversation.</p>	
N/A	<p>25.11. Non-compliance with paragraph 25.10 may result in the court:</p> <p>(a) refusing to allow reliance on the witness' statement; or</p> <p>(b) giving limited weight to the witness' evidence.</p>	To clarify flow-on effect from evidence not being properly prepared
N/A	<p>31.3. If the parties cannot agree on a single expert, each party is to contact the Court in writing via email nominating the names of not more than 3 experts whom the party considers should be</p>	To establish process for court to select single expert where there is disagreement, and ensure wherever possible that only single experts are used, and pursue guiding principles at ss 56-60 of the <i>Civil Procedure Act 2005</i>

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	appointed as the single expert in the proceedings.	
N/A	31.4. Upon receipt of the correspondence referred to at paragraph 31.3 from both parties, the Court will randomly select an expert from the parties' list to be briefed as the single expert in the proceedings, and notify the parties of its selection. The parties shall then proceed to engage and brief the single expert.	To facilitate selection and briefing of expert. View is that random selection is best approach to provoking parties to reach agreement on single expert. NB: Propose that Registrars delegated powers be updated to include powers around appointment of experts. No apparent issue with this power being delegated.
32.1. Where parties cannot agree on a single expert, the Court may give leave for each party to call their own expert witness.	32.1. Where parties cannot agree on a single expert, a judicial officer may give leave for each party to call their own expert witness.	Given that Registrars have delegated powers to order expert reports, it was determined that the words 'judicial officer' be inserted in lieu of the words 'the Court', so that the intent of the Practice Note with respect to single experts could not be undermined by Registrars ordering joint experts without the scrutiny of a magistrate.
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.	33.4. If the parties cannot agree on how the single expert witness is to be briefed, they must immediately notify the Court in writing via email, which will then give directions about how the single expert is to be briefed.	To clarify means of contact in this circumstance
N/A	34A. Expert evidence via AVL 34A.1. Where expert witnesses are located within New South Wales, their evidence will be given via AVL. 34A.2. Where expert witnesses are located outside of New South Wales, their	To set default position for experts to give evidence via AVL unless circumstances necessarily require otherwise. Specifically endorsed by LCO Civil Liaison Committee with a view to widening the pool of potential experts and reducing costs for the parties

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	<p>evidence may be given via AVL subject to the application of the Evidence (Audio and Audio Visual Links) Act 1998 and the Trans-Tasman Proceedings Act 2010 (Cth).</p> <p>34A.3. A party may apply (Attachment F) for an expert witness to give evidence in person.</p> <p>34A.4. The Court will determine such applications in the interests of justice.</p>	
35.1. The Court will seek to ensure that party / party costs (including disbursements) remain proportionate.	35.1. The Court will seek to ensure that party / party costs (including disbursements) remain proportionate to the amount in issue.	To clarify proportionality
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.	REMOVE	UCPR 42.32 already provides for Smyth orders and notification at any stage in proceedings. This provision somewhat redundant. In circumstances where 1/100 matters are making it to hearing, query necessity of default requirement in interests of reducing costs etc.
38.2 Unless the Court otherwise orders, the following orders are taken to	38.2 Unless the Court otherwise orders, the following orders are taken to	To adequately account for costs following change in jurisdictional limit

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<p>have been made when the defence is filed in the proceedings:</p> <p>...</p> <p>(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.</p>	<p>have been made when the defence is filed in the proceedings:</p> <p>...</p> <p>(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 \$5,000.00</p>	
<p>39.1. Clause 39.2 applies to all proceedings in the General Division, regardless of the amount claimed, where the plaintiff or cross-claimant:</p> <p>(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</p> <p>(b) would be entitled to an order against the defendant or cross-defendant</p>	<p>39.1. Clause 39.2 applies to all proceedings in the General Division, regardless of the amount claimed, where the plaintiff or cross-claimant:</p> <p>(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</p> <p>(b) would be entitled to an order for costs against the defendant or cross-defendant</p>	<p>For clarification</p>
<p>N/A</p>	<p>39.3. In the event the Court is satisfied as required under cl 39.2 that the commencement or continuation of the proceedings in the General Division was warranted, then the maximum costs that may be awarded to a plaintiff or cross-claimant are those which would have been awarded had the claim proceeded in the Small Claims Division, or 25% of the amount awarded by the Court on the claim, whichever is the greater.</p>	<p>To ensure costs can be appropriately awarded in claims where judgment amount falls below Small Claims threshold but nonetheless appropriately proceeded in the General Division.</p>