



## Practice Note No 2 of 2013

### Appearances by persons without an entitlement to appear in the Costs Court

1. The Chief Justice has authorised the issue of the following Practice Note.
2. The purpose of this Practice Note is to set out the procedure for seeking leave to appear before the Costs Court and the responsibility of practitioners on the record who seek to have non-practitioners appear.
3. The right to appear on behalf of another in the Supreme Court is reserved to those admitted to legal practice. Those without a right to appear must obtain the leave of the Court.
4. All persons who do not have a right to appear before the Court shall indicate their intention to apply for leave to appear before the commencement of any hearing in which they seek to appear.
5. This should be done by letter addressed to the Associate to the Associate Judge, Judicial Registrar or Costs Registrar which should contain an acknowledgement that the person seeking leave to appear has read and understands their obligations under the *Civil Procedure Act 2010* and the potential sanctions for breach of those obligations. A copy of the letter should also be sent to the other parties in the matter.
6. Where a person seeks leave to appear before the Court they shall disclose:

- Whether they are a disqualified person or have been found guilty of a relevant offence within the meaning of s 2.2.7 of the *Legal Profession Act 2004*;
  - If so whether the solicitor on the record (if any) for the party they seek to appear for has been informed of this fact and whether the Legal Services Board has given approval pursuant to s 2.2.7 of the *Legal Profession Act 2004*.
7. Any legal practitioner who engages a person to appear before the Costs Court who requires the leave of Court to appear shall satisfy themselves that the person is suitable to appear on behalf of their client. They must also inform their client in circumstances where the costs of that appearance will not be able to be claimed on taxation (See *Mietto v G4S Custodial Services Pty Ltd* [2010] VSC 304).

Vivienne Macgillivray  
Executive Associate to the Chief Justice  
27 June 2013

**Section 10 Application of overarching obligations – participants**

(1) The overarching obligations apply to –

....

(b) any legal practitioner or other representative acting for or on behalf of a party;

*Legal Profession Act 2004*

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**Section 2.2.7 Prohibition on certain associates**

(1) Unless the Board gives its approval, a local legal practitioner, or a law practice in this jurisdiction, must not have a lay associate who the practitioner or practice knows to be –

(a) a disqualified person; or

(b) a person who has been found guilty of a relevant offence.

(2) A contravention of subsection (1) is capable of constituting unsatisfactory professional conduct or professional misconduct by any Australian legal practitioner concerned in the contravention.

(3) A disqualified person, or a person found guilty of a relevant offence, must not become or seek to become a lay associate of a local legal practitioner or law practice, unless the person first informs the practitioner or practice of the disqualification or finding of guilt.

Penalty: 60 penalty units.

(4) Proceedings for an offence under subsection (3) may only be brought within 6 months after discovery of the offence by the Board.

(5) This section does not apply in circumstances prescribed by the regulations.