



Supreme Court of Victoria

Practice Note SC Gen 11

Costs Court

1. INTRODUCTION

- 1.1 The Chief Justice has authorised the issue of the following Practice Note.
- 1.2 The purpose of this Practice Note is to set out practice in relation to various matters in the Costs Court.

2. COMMENCEMENT

- 2.1 This Practice Note was issued on 27 June 2017 and commences on 1 July 2017.

3. DEFINITIONS

- 3.1 In this Practice Note:

Legal Profession Uniform Law means the *Legal Profession Uniform Law Application Act 2014*

Legal Profession Legislation includes the *Legal Profession Uniform Law*, *Legal Profession Act 2004* or *Legal Practice Act 1996*

4. OBLIGATIONS OF PRACTITIONERS

- 4.1 The *Civil Procedure Act 2010* requires the Court to give effect to the overarching purpose of facilitating the 'just, efficient, timely and cost-effective resolution of the real issues in dispute' (s 7). The Court and parties have overarching obligations to use the most efficient practices to resolve a dispute (s 22), narrow issues in the dispute (s 23) and ensure that costs are reasonable and proportionate (s 24). Procedures in the Costs Court seek to facilitate these aims.
- 4.2 Pursuant to Chapter 5 of the *Civil Procedure Act 2010* the Costs Court may refer any matter to appropriate dispute resolution at any stage of the proceeding.

5. CITATION OF JUDGEMENTS AND PROVISION OF COPIES TO THE COURT AND OPPOSING COUNSEL DURING A TAXATION

- 5.1 Parties shall comply with the requirements of Practice Note SC Gen 3 in relation to the citation of authorities and in particular the requirement to provide copies of decisions of the Costs Court or Taxing Master or any other case referred to in argument not available electronically or in an authorised or unauthorised report.

6. LISTING OF PARTY PARTY TAXATIONS

- 6.1 To commence a proceeding in the Costs Court, parties must file a Summons for Taxation, the bill of costs, the Party Party Taxation Information Form (see below), a copy of the costs order, judgment or deed of release, and pay the requisite filing fee.
- 6.2 In the case where a party wishes to initiate a proceeding electronically, they must firstly email the completed Party Party Taxation Information Sheet to: costs.court@supremecourt.vic.gov.au
- 6.3 The next available date will be nominated and communicated back to the party, who will then be in a position to e-file the Summons for Taxation, the bill of costs, the Party Party Taxation Information Form (see paragraph 3), a copy of the costs order, judgment or deed of release, and pay the requisite filing fee.
- 6.4 All Party Party bills of costs will be listed as follows at the time of filing.

Bills claiming costs and disbursements of less than \$50,000 will be sent directly to assessment pursuant to Part 8 of Order 63 - Alternate Assessment Procedure (Supreme Court (General Civil Procedure) Rules 2015). The applicant will be given details of the assessment procedure in the assessment notice when the Summons for Taxation and bill of costs is filed. The applicant must include this information when serving the Summons and Bill of Costs.

The applicant must file and serve with the bill of costs copies of disbursement invoices claimed together with a certification of payment of the disbursements or an undertaking in accordance with Rule 63.43(2)(b) to pay the disbursements after assessment.

The applicant must file an affidavit of service three days before the date listed for assessment.

Bills of costs claiming costs and disbursements of over \$50,000 will be listed by **Registry** for Mediation pursuant to Order 50.07.1 and 50.07.4 of the *Supreme Court (General Civil Procedure) Rules 2015* approximately six weeks after filing **the Summons for Taxation and Bill of Costs**. **Bills of costs listed for Mediation** will be listed for between 1 hour and 3 hours depending on the advice given by the practitioner as to the matters complexity.

- 6.5 The applicant **must** inform the respondent of the listing details and the requirement to serve a Notice of Objections when the Summons and bill of costs are served.

- 6.6 The Notice of Objections must be filed and served by the respondent at least seven days prior to the mediation. If the matter is not resolved, the mediator may list it for taxation for one or more days on the next available date or dates.
- 6.7 Parties attending the mediation must have authority to settle without the need to revert to the authorising party during the course of the mediation and must attend with their advising solicitors.
- 6.8 **No later than 48 hours prior** to the mediation, parties are to advise the Court, and all other active parties participating in the mediation, who will be in attendance.

7. PARTY PARTY TAXATION INFORMATION FORM

- 7.1 When filing a Summons in the Costs Court, the practitioner for the applicant **must** provide information on the form annexed to this notice. The completed form must accompany the Summons and bill of costs. The form will be placed on the court file and a copy must be served on all parties by the applicant.
- 7.2 The Summons for Taxation will not be issued without the completed form.
- 7.3 The information required to be provided includes:
 - 7.3.1 Estimated time required for the taxation of the bill of costs. The Costs Court should be notified as soon as practicable in the event of a revised estimate and wherever possible revisions should be as agreed between the parties. Where the hearing is likely to exceed three hours in length this must be included in the form details.
 - 7.3.2 Summary of proceeding - Provide a short summary of the nature of the proceeding resulting in the entitlement to payment of costs, including details of the court order or agreement and the amount of costs and disbursements claimed.
 - 7.3.3 If the applicant is of the view that it is desirable for the matter to be listed at a call over, the applicant must provide reasons why, e.g. the respondent is likely to be self-represented or directions are required.
 - 7.3.4 Whether the application is contested/unopposed/ex parte/by consent – In any matter if orders are sought by consent, signed minutes should be provided to the court at some time before the hearing date. Where signed consent minutes of order are sent (usually in PDF), an editable version should also be sent either in rich text or Word (editable) format to costs.court@supremecourt.vic.gov.au and to the Associate to Associate Justice Wood: wood.associate@supcourt.vic.gov.au, as soon as practicable before the hearing. A return email address is also required.

8. LISTING OF OTHER MATTERS

- 8.1.1 Reviews of costs under **Legal Profession Legislation** will be called over before Judicial Registrar Gourlay at 9.30am on the published call-over day.
- 8.1.2 Reviews from decision of Costs Registrars or the Judicial Registrar in Party Party matters and under the **Legal Profession Legislation** will be initially listed

for call-over before Judicial Registrar Gourlay with directions made for the conduct of the review.

9. POINTS OF CONTACT

9.1 For assessment and mediation listing, parties should contact the Principal Registry via

Email: costs.court@supremecourt.vic.gov.au

Phone: +61 (03) 9603 9393

9.2 Where a matter settles or the mediation is no longer required, the solicitor for the applicant must notify the Court immediately, via

Email: costs.court@supremecourt.vic.gov.au

Phone: +61 (03) 9603 9324

Facsimile: +61 (03) 9603 9320

9.3 Consent minutes must be sent in an editable Word format to costs.court@supremecourt.vic.gov.au as soon as practicable prior to the hearing and preferably no later than 4pm the day before the hearing.

9.4 Following the issue of proceedings the point of contact for all Legal Profession Legislation is the Associate to Associate Justice Wood via

Email: wood.associate@supcourt.vic.gov.au

Phone: +61 (03) 9603 9324 Facsimile: +61 (03) 9603 9320

9.5 No party should communicate either by email or by telephone directly with the Costs Registrars. These communications must be to the Court , via

Email: costs.court@supremecourt.vic.gov.au

Phone: +61 (03) 9603 9393

Facsimile: +61 (03) 9603 9320

10. APPLICATIONS BY SOLICITOR FOR COSTS PURSUANT TO S 134AB(31) OF THE ACCIDENT COMPENSATION ACT 1985 OR S 344(7) OF THE WORKPLACE INJURY REHABILITATION AND COMPENSATION ACT 2013 FOLLOWING RESOLUTION OR JUDGEMENT IN A DAMAGES PROCEEDING.

10.1 If, after a solicitor seeking costs pursuant to s 134AB(31) of the *Accident Compensation Act 1985* has complied with County Court Practice Note PNCLD 2-2016, and the County Court Judge orders that the claim for costs is to be reviewed by the Costs Court , the following steps would apply:

10.1.1 The Judge makes an order:

- (a) referring the application for costs to the Costs Court for review; and
- (b) that the solicitor files a Summons for Taxation seeking a review of the costs.

- 10.1.2 The Summons for Taxation of costs seeks a review pursuant to the Judge’s order and the fee on summons is paid. Refer (refer to the Prothonotary’s fees on the [website](#)). A Costs Court file is then created.
- 10.1.3 With the Summons the solicitor must file a copy of the referral order and copies of any affidavits filed in the County Court in accordance with County Court practice note PNCLD 6-2016.
- 10.1.4 The matter will be referred to assessment by a Costs Registrar or Judicial Registrar pursuant to Part 8 of Order 63- Alternate Assessment Procedure.
- 10.1.5 Upon completion of the assessment the County Court Judge and the applicant will be advised of the review result. If the applicant does not object to the assessment then the Judge will further consider the application and/or make an order pursuant to s 31 of the *Accident Compensation Act 1985*.
- 10.2 If the applicant informs the Judge of an objection to the review result the Judge may make further any orders, including refusing the application. The applicant can then apply to the Costs Court for the costs to be assessed pursuant to the **Legal Profession Legislation**.

11. GUIDE TO DISCRETIONARY ITEMS IN THE BILL OF COSTS

- 11.1 With **Party Party** bills of costs, **the test for taxing on the standard basis will be whether** costs are reasonably incurred and of a reasonable amount, including any claims for items referred to in this guide and any disbursement claims
- 11.2 The Supreme Court scale of costs is found at Appendix A of the *Supreme Court (General Civil Procedure) Rules 2015* and is the scale of costs applied for taxation of **party party** costs in Supreme Court matters. Awards of costs on the County Court scale are allowed at eighty percent (80%) of the Supreme Court scale. County Court scale awards are made by the County Court and generally by VCAT. The Magistrates’ Court scale applies to Magistrates’ Court costs orders. The jurisdictional scale of costs applies to the costs of taxation in accordance with Rule 63.36.
- 11.3 In relation to the Supreme Court scale, items 4 and 17 include a discretion to the Costs Court in relation to amounts to be allowed. Where the County Court scale is applied (i.e. at eighty percent of the Supreme Court scale), the allowances to Item 4 may be reduced to eighty percent of the guideline amount. The information set out in the table below provides a guide about how those discretions are commonly exercised.
- 11.4 Scale item 4 provides that reproduction by photocopy or other machine made copy including hard copies of electronic documents shall be at the discretion of the Costs Court.

As a guide, the Costs Court may allow Scale item 4 claims on the following basis –	for each printed side of a page 0.25 cents
Where there is large or bulk copying the rate allowed may be lower than 0.25 c per page.	

If printed out of the office, the amount charged by the service provider must be claimed as a disbursement and will be allowed if reasonable.	
Item 17 Care, skill and attention The Costs Court will consider the matters set out in Rule 63.48 and item 17 including work already allowed, research, (item 13) and allowances made for Counsel	A percentage of the amount allowed in the bill of costs is commonly within the range of 0 – 15%

- 11.5 Item 19 contains maxima fees for Counsel. Where costs are taxed pursuant to an order of the Supreme Court, Counsel’s fees in excess of scale cannot be allowed by the Costs Court unless the Supreme Court otherwise orders. Therefore where costs are sought pursuant to an order of the Supreme Court, and the party seeks sums for Counsel’s fees in excess of the maximums in the scale, an application will need to be made to the Judge making the costs order at the time the costs order is sought and an order made that Counsel’s fees in excess of the scale be allowed before they can be allowed on taxation by the Costs Court.
- 11.6 The Supreme Court may fix the rate or amount of Counsel’s fees above scale, or direct the Costs Court to allow the fees of Counsel in excess of scale when assessing or taxing the costs. In the latter case the Costs Judge, Judicial Registrar or Costs Registrar will fix the rate of charge in excess of the scale amount.
- 11.7 The Costs Court only has a full discretion to allow fees in excess of the maximum in limited circumstances. For example, pursuant to a notice of discontinuance or arising from the acceptance of a formal Offer of Compromise, or taxation pursuant to the terms of a Release, or reviews under the Legal Profession legislation in accordance with scale.

12. APPEARANCES BY PERSONS WITHOUT AN ENTITLEMENT TO APPEAR IN THE COSTS COURT

- 12.1 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.
- 12.2 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.
- 12.3 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.
- 12.4 Where a person seeks leave to appear before the Court they shall disclose:

- 12.4.1 Whether they are a disqualified person or have been found guilty of a relevant offence under **Legal Profession Legislation**;
- 12.4.2 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 under **Legal Profession Legislation**.
- 12.4.3 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).

AMENDMENT HISTORY

27 June 2017: This Practice Note was issued on 27 June 2017 and replaced former Practice Note SC Gen 11.

Vivienne Macgillivray
Executive Associate to the Chief Justice
27 June 2017

COSTS COURT– Party Party Taxation Information Form

Hearing Return Date (Court Use Only)			
Proceeding number:			
Estimated time required for taxation hearing:			
Summary of Order for taxation or agreement Provide a short summary of the Order or agreement or Rule that establishes the entitlement for costs.			
A Short Summary of the principal litigation or Austlii reference to the decision of the Court			
Who is bringing the application? Party type and name of party.			
Amount of costs claimed The amount of professional charges and disbursements claimed in the bill of costs	Professional charges \$	Disbursements \$	Total \$
Any reason why the matter should be referred to a Callover – i.e. Self-represented Litigant as applicant or respondent. Any other relevant matter.			
Whether the matter likely to be Opposed / Unopposed / Ex-Parte / or by Consent?			
Details of Respondent’s legal practitioner if known			
Applicant’s Firm name:			
Practitioner with conduct:			
Costs Lawyer or Consultant who drew the bill			
Direct telephone number:			
Email address:			
Unavailable mediation/hearing date/s (if any): List any dates within two months of the filing date that the filing party is <u>not</u> available			
Date and signature			