

Changes in the Magistrates' Courts

New Local Court Rules

As practitioners will be aware, in July 1997 the Legislative Assembly amended the *Local Court Act* to increase the jurisdiction of the Court to \$100,000. The *Small Claims Act* was also amended to require civil claims up to \$5,000 to be lodged in the Small Claims Court and to extend the Small Claims jurisdiction to \$10,000. It is planned to bring these amendments into force on 1 February 1998 along with new Local Court rules.

The major changes in the new rules are in relation to the caseflow management procedures and costs.

Caseflow management

It is well known that at least 80% of all civil cases are settled before a hearing. The new caseflow management rules are intended to encourage settlement of matters earlier than at the door of the Court.

Once a defence has been filed and served, a date for a *conciliation* conference will be set. That date will be no less than 35 days after the lodgement of the defence. The time allotted for the conference will be half an hour. At the conference, parties will be expected to have provided full discovery and to be fully aware of the issues between them. The purpose of the conference will be to resolve the matter through conciliation, or, if that is not possible, to narrow the issues to be litigated.

To encourage the parties to use these conferences as intended, it will be compulsory for the parties themselves to attend with or without their legal representatives. The conference will be without prejudice so as to encourage full and frank disclosure. If at any stage of the conference it becomes evident that the matter could benefit from further discussion, the presiding officer may set the matter down for a formal mediation. If it is evident that the matter will not resolve, then the presiding officer will make directions regarding the future running of the litigation.

Multiple return dates will not be given for conciliation conferences, nor will these meetings be adjourned *sine*

die, unless a very strong reason is given for such adjournment. (Solicitors' full diaries will not be accepted as a good reason).

The next conference will be a *pre-hearing* conference, the purpose of which will be to again attempt resolution of the matter, failing which it will be set down for hearing. At the conference, the parties will be expected to settle a memorandum of agreed issues to be litigated and to be in the position to inform the Court as to the availability of witnesses, counsel, length of time for the hearing etc. Attendance by the parties in person at this conference will be required.

As a deterrent against non-appearance at or lack of preparation for conferences, the presiding officer will have the power to strike out a claim, give leave to proceed to judgment, or to make appropriate costs orders including an order against a practitioner personally.

Costs and taxation

In line with the increase in jurisdiction, the costs scale has been reviewed. The lump sum scale has been abolished and a percentage of the Supreme Court Scale will apply. That percentage is in the discretion of the Court, however, the rules set out the following guidelines:

Amount of claim

\$5,001 - \$10,000	50%
\$10,001 - \$50,000	80%
\$500,000 - \$100,000	100%
Crimes Victims Assistance applications	80%

The percentage to apply in tenancy matters will be in the discretion of the Court.

It will be incumbent on the presiding magistrate to specify an applicable percentage when making an order for costs. If an order regarding a percentage is not made (or an amount not fixed), it will be up to the parties to apply to the Court for such an order.

In line with the recommendations of the Australian Law Reform Commission, the Court is empowered to under the new rules to make a "public interest costs order". The rules set out the crite-

ria which must be satisfied before such an order will be made and the factors the Court will take into account when considering such an order.

The bill of costs for taxation is to be in chronological order in 3 parts: preparation; attendance at hearing; and taxation. No "specific care and conduct" will be allowed on a bill, however "general care and conduct" will be claimable in relation to the "preparation" and "attendance at hearing" sections of the bill. Clerk's time for engrossing documents will be allowable only where it forms part of an item in the composite scale, or is for 5 units or more. Parties objecting to items in a bill will be expected to file a formal notice of objection prior to the date of taxation.

The 28 day time limit for filing a bill of costs has been extended to 2 months so as to allow parties more time to negotiate before proceeding to taxation.

Appeal rules

The appeal rules have been amended to take into account that appeals come to the Court from many different tribunals, commissions etc. The definitions of "appellant" and "respondent" have been widened and there will be an initial directions hearing to clarify the procedure to govern that particular appeal.

Conclusion

The above is a precis of the more substantial changes in the rules and does not include some of the housekeeping changes put in place. The rules have had a general overhaul including addition of rules to accommodate technological advances (e.g. the possibility of electronic filing of documents); streamlining of the execution of judgment debts processes; and clarification of the right of appeal from the decisions of Registrars including Judicial Registrars. Some of the forms have been redrafted.

OTHER RULES

Practitioners should also be aware that the new Crimes (Victims Assistance) Rules and Justices Act (Criminal Practice) Rules are also scheduled for commencement in early 1998.

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Mediation in the Magistrates' Courts

In line with current trends throughout Australia in alternative dispute resolution, the NT Magistrates' Courts are developing services which provide users with some choice about how their civil matters are dealt with.

Mediation is becoming a widely used method of resolution of disputes. As it grows in popularity, so does the range of definitions used to describe it. The National Alternative Dispute Resolution Advisory Council released the following definition in March 1997:-

Mediation is a process in which

the parties to a dispute, with the assistance of a neutral third party (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.

Mediation often reduces the cost, time and stress of traditional court procedures, thereby providing an attractive alternative to parties and

courts. It is important to remember that it is a voluntary process, useful only when all parties are willing to try to negotiate a settlement of their dispute.

Mediation is available for matters within the jurisdiction of the Magistrates' Courts, subject to the availability of mediators. There are three trained mediators at Nichols Place: Vivien Holmes and Tanya Fong-Lim, Judicial registrars, and the Registrar of the Local Court, Karen Dey.

Please contact Karen Dey on 08 8999 6360 if you require further information about mediation and the courts.

- Office of Courts Administration

Other Rules

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The new Crimes (Victims Assistance) Rules are a marriage of the relevant Local Court rules and the present practice direction dealing with these matters and should hold no surprises for practitioners.

The Justices Act (Criminal Procedure) Rules are intended to formalise and improve existing practices. They will provide for a case management regime for the Court of Summary Jurisdiction with an emphasis on early and continuous disclosure.



Have you joined the Qantas deal yet?

For further information contact the Law Society

Technological Advances in the Courts

Video conferencing facilities are now available in Courts 5 and 11 of the Supreme Court in Darwin, Courts 2 and 7 of the Local Court in Darwin, and Courts 1 and 4 in Alice Springs. The facilities are operational and available for use in hearings and criminal trials. To arrange to use these facilities you should speak to the following people:

1. Marianne (Mickey) Warren at the Supreme Court
tel: 8999 7930
2. Judy Finn, Civil Registry at the Local Court, Darwin
tel: 8999 6216
3. Jason Reid, Criminal Registry Court of Summary Jurisdiction, Darwin
tel: 8999 6416
4. Peter Campbell, Alice Springs Court House
tel: 8951 5717.

The costs of using these facilities will be as follows:

1. \$200 per hour site fees

2. \$25 per 15 minutes

3. Telecom transmission costs which could be between \$15 - \$40 per hour depending on the distance.

That is, if you use the facility for two and a half hours then you will be charged \$400 plus \$50 and transmission costs. If you use the facility for three hours you will be charged \$600 plus transmission costs.

These fees are competitive and practitioners are encouraged to use these facilities.

Internet

Practitioners are also advised that the daily cause list of the Supreme Court at Darwin is available on the Internet. The address is:

<http://www.nt.gov.au/oca>.

It is also intended to put the Magistrates' Courts lists on the Internet in the near future.

If you have any queries about technology in the courts, please contact Kevin McShanag on 8999 6289.

- Information Technology Committee of the Office of Courts Administration