

# Practice Note DC (Civil) No. 1B

## Online Court and the General List in Sydney

This Practice Note is issued under sections 56 and 57 of the *Civil Procedure Act 2005* and is intended to facilitate the just, quick and cheap resolution of the real issues in all proceedings before the Court. It applies to all matters in the General List in Sydney commencing 31 October 2018. This Practice Note is to be read in conjunction with Practice Note 1.

### 1. Definitions

#### 1.1 In this Practice Note:

"court date" means a date on which the proceeding is listed for case management.

"CPA" means *Civil Procedure Act 2005*.

"delegate" means a managing lawyer or employed support staff member who is registered as a delegate by the practitioner on the record via the Online Registry Website.

"OCR" means Online Court Record.

"OLC" means Online Court.

"ORW" means Online Registry Website.

"party" means a party to a proceeding, and includes a practitioner on the record who is representing the party in the proceeding and any delegate of the practitioner.

"practitioner" means legal practitioner.

"UCPR" means the *Uniform Civil Procedure Rules 2005*.

## **2. Purpose and application**

- 2.1 The object of this Practice Note is to minimise the cost and inconvenience of in-person court appearances by enabling parties to make online requests without the need to attend court.
- 2.2 The OLC is to be used for case management of matters in the General List in accordance with this Practice Note and Practice Note 1, unless the Court otherwise orders.

## **3. Conduct in the Online Court**

- 3.1 The OLC is a virtual courtroom, authorised by Schedule 1 to the *Electronic Transaction (ECM Courts) Order 2005*. It may only be used for issues that may be considered and determined by the Court.
- 3.2 The OLC is not to be used for communications solely between the parties.
- 3.3 Parties must conduct themselves and use language in the OLC as they would during an in-person court appearance. Parties must adhere to professional etiquette and courtesy in the OLC.
- 3.4 Parties must keep their User Name and Password secure.
- 3.5 The Court may, from time to time, give instructions as to:
- (a) the acceptable length of reasons for requests and messages in the OLC;  
and
  - (b) the time and date by which requests and responses to requests must be made.
- 3.6 Failing to submit requests, responses, counter requests or consents in the OLC in accordance with the timeframes described within this Practice Note or

in accordance with timeframes otherwise ordered by the Court will be treated as a non-appearance in the proceedings. Further non-appearance may result in the proceedings being dismissed.

- 3.7 If a message is submitted to the OLC by a delegate for a practitioner on the record, the practitioner is taken to have affirmed to the Court that he or she has actual knowledge of its contents.
- 3.8 Undertakings given in the OLC by parties are as binding as if the undertaking were given in an in-person courtroom appearance.
- 3.9 Parties will be notified by email when a message has been sent in the OLC.

#### **4. Commencement in the Online Court**

- 4.1 When a proceeding enters the General List and each of the parties is a registered user of the ORW, the proceeding is eligible for the OLC and will be activated for the OLC.
- 4.2 All parties will be notified immediately by email that the proceeding is eligible and has been activated for the OLC.
- 4.3 Parties in matters eligible to be managed by the OLC must use the OLC for case management unless exceptional reasons are demonstrated or the Court otherwise orders.

#### **5. How matters will be dealt with in Online Court**

##### **Case Management Orders**

- 5.1 The following communications, where applicable, are to be made in the OLC *prior* to each court date:
  - (a) *Request*: a party may make a request for orders.

- (b) *Response:* each other party will be automatically notified of the request, and is to respond by consenting to the request or making a counter request.
  - (c) *Counter request:* each other party will be automatically notified of the counter request. If a counter request is made, each other party is to respond by indicating their consent or opposition to the counter request.
  - (d) *Consent:* when all parties have consented to a request it is then forwarded to the Court to consider.
- 5.2 As far as practicable, parties will communicate between themselves and come to an agreed position as to the orders sought prior to submitting a request in the OLC.
- 5.3 Any terms agreed between the parties should be explicitly included as orders sought in the request.
- 5.4 All requests or counter requests made in the OLC must be supported with reasons.
- 5.5 All requests must be completed by 2pm, three business days prior to the next court date.
- 5.6 All consents or counter requests must be completed by 6pm, three business days prior to the next court date.
- 5.7 If communications, including both a request and/or a response to a request, are not received in the OLC by the times specified in paragraphs 5.5 and 5.6 above, all the parties are required to attend in person on the court date in accordance with the requirement of Practice Note 1, in particular paragraph 4.

5.8 If parties are required to attend Court they must be prepared to address the matters in paragraph 8 below.

### **Hearing Dates**

5.9 Hearing dates with estimates of 5 days or more should not be requested through the OLC. Parties must attend a listing to obtain a hearing date of 5 days or more and comply with Practice Note 1, paragraph 9. The necessity to list the matter to obtain a hearing date will exempt the parties from paragraph 10 of this Practice Note.

### **6. Court Orders**

6.1 When the Court makes an order in the OLC an automatic email will be sent to all parties informing them of the order.

### **7. Messaging**

7.1 At any time in the OLC:

- (a) A party may send a message to the Court regarding any case management issues between the parties; and
- (b) The Court may choose to send a message to the parties if it appears there are case management issues requiring resolution.
- (c) Messages are not to be sent as a substitute for the procedure of obtaining case management orders in paragraph 5.
- (d) Exceptions to using messages for the case management order process may include the following:
  - i. Notification of urgent matters to be brought to the attention of the Court.

ii. Notification that a matter has resolved.

7.2 Messages sent will be visible to all parties.

7.3 Messages must be relevant to the topic under discussion, concise and posted in a timely manner.

7.4 The Court may give instructions as to the length of messages, the content of messages and the time and date by which messages must be received.

## **8. Costs**

8.1 The Court may determine that the parties are required to attend in person on a court date and will make orders accordingly.

8.2 On a listing date at which the parties are required to appear in person, the Court may of its own motion consider making orders for costs, and/or consider any application for costs from parties to cover the costs of appearance in person and/or costs of preparation of any OLC request.

8.3 In determining the costs application, the Court may take into account any relevant consideration, including without limitation:

- (a) Any failure of a party or parties to respond to a request, counter a request or consent to a request (s 56(5) CPA);
- (b) Whether the in-person court appearance could have been avoided if the party had responded to an OLC request; and
- (c) Whether there is a reasonable explanation for the party or parties not responding to an OLC request.

8.4 Costs will be ordered against a party or a practitioner for failure to adequately explain or address matters in 8.3 (a) to (c) under paragraph 4.4 of Practice Note 1 and section 99 of the CPA.

## **9. Terminating or Extending an Online Court request**

9.1 An OLC request may be terminated at any time by the Court and the proceeding listed for resolution at an in-person court appearance before the Court.

9.2 The Court may terminate an OLC request and direct the parties to re-submit a further request.

9.3 The Court may adjourn a listing to extend the time to consider an Online Court request or direct the parties to prepare a further online request.

## **10. Documents**

10.1 Documents can be attached as part of a request or attached to a message. Any attached documents will be viewable by all parties and the Court.

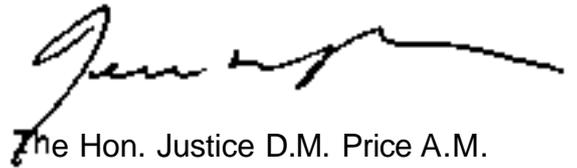
10.2 Where parties require documents to be formally filed, they should do so via the ORW and not via the OLC.

10.3 Documents cannot be accepted for filing in the OLC.

## **11. Obtaining copy of Online Court Record**

11.1 All activity in the OLC including requests, consents, counter requests and messages will be recorded in the OCR and will be visible to all parties and the Court.

11.2 Any person may make a request to the Court for a printed copy of the OCR.  
The printed copy of the OCR may be provided, subject to any suppression order or other restrictions that might apply to the proceeding.

A handwritten signature in black ink, appearing to read 'D.M. Price', with a long horizontal flourish extending to the right.

The Hon. Justice D.M. Price A.M.

Chief Judge

16 October 2018