

Magistrates Courts

Practice Direction No. 18 of 2010

Fixed Costs or Costs to be assessed

1. Rule 687(2) of the Uniform Civil Procedure Rules 1999 (UCPR) provides, in part, that instead of assessed costs, the court may order a party to pay to another party “an amount for costs fixed by the court” or “an amount for costs to be decided in the way the court directs”.
 2. Rule 683 specifically applies to proceedings in the Magistrates Court and allows a Magistrate to fix the amount of the costs of the proceeding or to order that the costs be assessed by a costs assessor. By virtue of the definition of “costs assessor” in Rule 679, that includes an assessing registrar (See Magistrates Court PD 10 of 2007).
 3. This Practice Direction applies from 1 November 2010 and is intended:
 - (a) to encourage parties to agree on the amount of costs to avoid the necessity for costs to be assessed; and
 - (b) to signal the authority of the court, in an appropriate case, to fix costs, and to ensure parties are in a position to inform that process.
 4. The court has a broad discretion to fix costs, and will do so where that will avoid undue delay and expense, but only when the court is confident costs can be fixed on a reliable basis.
 5. At all relevant times in the course of the hearing of a matter, parties should be in a position to inform the court of their realistic estimate of the amount of the recoverable costs, on a standard or indemnity basis, should that party be the beneficiary of a costs order. Where practicable, the estimate should be verified on affidavit, particularly in proceedings involving claims exceeding \$50,000 or when indemnity costs are sought. Preferably parties should not, for this purpose, be put to the expense, and suffer the delay, of preparing a costs statement complying with the UCPR. Any estimate must nevertheless be realistic and carefully formulated.
 6. Where a court makes an order for the payment of costs to be assessed:
 - (a) The party in whose favour the order is made (“the first party”) should, generally within 14 days of the order, provide the party obliged to pay the costs (the “second party”) with a realistic estimate of the costs claimed, including an explanation of the
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basis of the estimate sufficiently detailed to facilitate some broad examination of the reasonableness.

- (b) The second party must respond to the estimate within 7 days of receipt.
 - (c) Where the second party accepts the amount claimed by the first party, the first party shall inform the registrar who shall then refer the file to the Magistrate who made the costs order and who:
 - I. without the need for appearance of the parties, may fix the costs in the amount agreed and note that on the file; or
 - II. may direct that the matter be re-listed before him or her with the appearance of the parties required.
 - (d) If the second party does not accept the first party's estimate, the second party must provide the first party within 7 days of receipt a responding estimate, together with an explanation for any substantial variance. In relation to estimates under paragraph 6 (a) and this paragraph, reference is made to paragraph 5 above concerning the expense and delay of preparing a costs statement complying with the UCPR.
 - (e) Where the second party provides a responding estimate which, upon proper consideration by the first party is accepted, the first party shall proceed in accordance with paragraph (c) above.
 - (f) Where the second party provides a responding estimate which is not accepted by the first party, the first party shall then seek the re-listing of the matter before the registrar for future directions as to how the assessment is to be conducted.
7. Nothing in this Practice Direction affects the operation of Rules 733, 734, 735 and 736.



Judge Brendan Butler AM SC
Chief Magistrate
1 November 2010