

# PRACTICE DIRECTION NUMBER 3 OF 2007

## DISTRICT COURT OF QUEENSLAND

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### AGREED OR FIXED COSTS

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1. Rule 685(2) of the Uniform Civil Procedure Rules provides, in part, that instead of assessed costs, the court may order a party to pay to another party "an amount for costs decided by the court" or "an amount for costs to be decided in the way the court directs".
2. This Practice Direction is intended:
  - (a) to encourage parties to agree on the amount of costs otherwise 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.
3.
  - (a) The court has a broad discretion to fix costs, and will do so where that will avoid undue delay and expense, but only provided the court is confident to fix costs on a reliable basis.
  - (b) Parties should therefore, at all relevant times in the course of the hearing of a matter, 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.
  - (c) 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 carefully formulated and realistic.
4. 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") may, 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 basis of the estimate, sufficiently detailed to facilitate some broad examination of its reasonableness.
  - (b) In that event, the second party must, within 7 days of receipt, provide the first party with either notice of acceptance of the amount claimed, or a responding estimate, together with an explanation for any substantial variance. (In relation to estimates under para 4a and b, reference is made to para 3c above.)
  - (c) The first party may then seek the re-listing of the matter before the court (usually, the Judge or Judges who made the costs order), and apply for an order that costs be fixed in a particular amount. In so doing, the first party must inform the Judge of each party's estimate of the likely length of the hearing, and of the respective estimates of amount.
  - (d) In the event the court declines to fix costs in such a case, the above circumstances may nevertheless be taken into account, by the Registrar, in determining the disposition of the costs of any subsequent assessment.