

New costs claim form is user friendly

MARGARET BONESMO, COSTS COMMITTEE

Short form and long form bills of costs are gone. Recent changes to the Supreme Court costs adjudication rules have introduced a user friendly form for costs claims which is simpler to prepare and easier to assess and respond to. The former two-tiered bills of costs regime has been replaced by a single schedule on which the claim and response are shown on the one document and exchanged electronically. In this way the new schedule is intended to assist to narrow disputed issues, encourage early agreement of uncontroversial items, and be adapted to suit the circumstances of the adjudication.

Form 49 now requires a simple list of work and charges in date order. The same form could be used for inter partes claims (pursuant to all types of costs orders), as well as itemised accounts between solicitor and client. All that is required is to show an item number, the date the work was done, brief details of the work and the amount claimed for each item. Counsel fees and other disbursements should be listed at the end of the claim, with copy accounts attached.

Many firms already keep this information in their internal billing records. With file scrutiny, the billing records could be readily transposed onto the new form to suit the type of adjudication.

WHAT CLAIM DETAIL IS REQUIRED?

The date the work was performed and identity of the person doing the work should be shown. The solicitor's initials (ZZ) or if a paralegal, (PL) would be sufficient

Other abbreviations are acceptable. For example: 'Cl' for client; 'Ltr' for letter; 'Def' for defendant; 'Ta' for telephone attendance; 'Per' for perusal, 'Pa' for personal attendance, 'Sol' for solicitor, 'SOC' for Statement of Claim and so on.

The 'details' column does not anticipate lengthy particulars; rather brief information about the nature of the attendance is required to enable the item to be assessed by the respondent, appropriate

offers made, or brief reasons for dispute given. For example:

- a personal attendance on a client regarding an offer: '*Pa by ZZ on cl re offer.*'
- a letter to a doctor seeking a report: '*Ltr to Dr X re report.*'
- organising a conference with counsel: '*Arr. conf. with counsel*'
- attendance at a directions hearing: '*ZZ - Directions hearing*'
- perusing an affidavit: '*Per affid. of Ms Y*'
- Drawing a defence: '*Draw defence*'

The length of documents and duration of attendances must be given if the claim is drawn at scale. Where a claim covers more than one scale period, the relevant increase can be calculated on the total costs in each period as a lump sum at the end of the period. GST (if applicable) can also be claimed in a lump sum at the end.

If the claim is based on a (valid) time costs agreement between solicitor and client, it would be sufficient to show the number of units spent on each item and the appropriate rate per the agreement.

For all costs claims, care needs to be taken to include only charges covered by the costs order (or agreement), and to exclude attendances which are not properly part of the claim. For example in a party / party claim, work will commonly be excluded if:

- adverse interlocutory orders apply at certain stages of the proceedings
- work has been unnecessarily duplicated
- time is claimed for researching basic court rules that a solicitor is deemed to know
- internal supervision is claimed

WHAT RESPONSE DETAIL IS REQUIRED?

Form 49 enables a respondent to identify whether liability (necessity) for an item is agreed, and if so, assess whether the claimed quantum is reasonable. Whether liability should be admitted will primarily depend on the nature of the costs order (EG party / party; solicitor / client or indemnity order.)

Where liability for the item is agreed, the schedule requires a respondent to make a reasonable offer for the item. For example, common reductions to quantum on a party / party order may arise where:

- liability for a particular drawing fee is agreed, but the claimed length is excessive
- perusal of a particular document is agreed, but the per page rate claimed is excessive
- necessity for counsel is agreed, but the claimed rate is considered excessive.
- attendance at a hearing is agreed but the time claimed is excessive

Where liability for an item is not agreed, the response should give a brief reason for the dispute. For example on a party / party order, common objections to liability include:

- duplication
- not a scale charge
- unnecessary
- outside costs order

In addition, a respondent may consider that the claim details are insufficient to enable an item to be assessed. If so, an appropriate response would be to request further particulars of the item. As the schedule is intended to be a living document, exchanged electronically, further particulars can be inserted by the claimant (as for an amended pleading), and the appropriate response added.

If, after the schedule exchange process is complete, and a conference between the parties has failed to resolve all issues, any items, or categories of items still in dispute, may be referred to a Master for preliminary assessment pursuant to Rule 271.

The new requirements are contained in Amendment 32 to the Supreme Court Rules 2006 and the Explanatory Notes to Form 49. It should be noted that the format of any costs claim/response remains subject to Court directions taking into account any special circumstances of the case.

The Committee welcomes feedback and queries on Form 49 to Lynne.Shaw@lawsocietysa.asn.au **B**