

CHRISTOPHER D. FREEMAN

Level 11
Culwulla Chambers
67 Castlereagh Street
Sydney NSW 2000
Australia
DX 295 SYDNEY

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Tel: (+61 2) 9233 1551
Fax: (+61 2) 9233 4618

New South Wales Law Reform Commission
GPO Box 5199
SYDNEY NSW 2001
E-Mail: nsw_lrc@agd.nsw.gov.au

Email: cfreeman@culwulla.com.au
URL: www.culwulla.com.au

Dear Sirs,

Re: Submission in Respect of Security for Costs and Associated Orders

I refer to the above inquiry and submit that issues outline in the Consultation Paper 13 fall into the trap of continuing an expensive, uncertain and unwieldy process.

A more appropriate way to deal with security for costs is to amend the UCPR to effectively require directors of a corporate plaintiff to either guarantee the legal costs in the event the plaintiff is unsuccessful or alternatively impose a statutory presumption that a plaintiff is deemed to be unable to pay the costs of a defendant if ordered to do so where a director refuses or is unable to guarantee payment of the costs. The defendant can then rely on that presumption to seek an order for security for costs.

The procedure would be as follows:

1. Within 28 days of a corporate plaintiff serving an Originating Process¹ on a defendant, a defendant may by a Notice (being a new and specific form under the UCPR) (**'First Notice'**) require the directors of a corporate plaintiff to sign a declaration that the plaintiff can pay the costs of a defendant if ordered to do so.
2. Within 21 days of service of the First Notice, directors² of a corporate plaintiff are required to sign, file and serve a declaration (being a new and specific form under the UCPR) (**'Second Notice'**) that in their opinion the plaintiff can pay the costs of all defendants in the proceedings if ordered to do so.
3. Where the corporate plaintiff has:
 - (a) One director, that director is required to have been a director of the plaintiff for a minimum of 12 months, otherwise there is no entitlement to file and serve the First Notice;
 - (b) Two or more directors, at least two directors are required to have been a director of the plaintiff for a minimum of 12 months, otherwise there is no entitlement to file and serve the First Notice.
4. Upon the Second Notice being filed and served, defendants are not entitled to bring any application for security for costs.

¹ Meaning a Summons or Statement of Claim.

² Where there is only one director, that director must sign. Where a corporate plaintiff has two or more directors, at least 2 directors must sign.

5. In the event that costs are ordered against the plaintiff and they are not paid within 30 days of a notice of assessment issuing, then the director(s) who signed the Second Notice are personally for the costs order.
6. In the event that a Second Notice is not filed and served within 21 days:
 - (a) a defendant is at liberty to make an application for security for costs with the benefit of a statutory presumption that the plaintiff is deemed to be unable to pay the costs of a defendant if ordered to do so;
 - (b) provided a defendant brings an application for security for costs within a further 14 days, the proceedings are stayed until the application is determined or security is provided as determined by the Court.

This benefits of such a procedure are:

1. The process is streamlined and *certain* with defined time limits and specific procedures;
2. If the Second Notice is filed, a defendant effectively has security for costs in the form a director's guarantee;
3. If the Second Notice is not filed, then a defendant can bring an application for security for costs without having to prove that the plaintiff is or may be unable to pay the costs of the defendant if ordered to do so;
4. In order to implement this process only requires a minor addition to the UCPR and the drafting of two forms.

Yours Faithfully,



CHRISTOPHER D. FREEMAN