

Interlocutory Applications

The following practice direction is issued pursuant to section 95 of the *Work Health Act* and applies from 1 September 1996.

Background

Rule 33 of the Work Health Court Rules provides that, where a matter or thing relating to the conduct of the Court is not provided for by or under these Rules, the Chief Magistrate may give such directions in relation to that matter or thing as are considered appropriate.

The Work Health Court Rules do not provide for procedures in respect of interlocutory applications. In particular, no time for service of such applications is given.

The procedures prescribed by this practice direction are designed to ensure that matters in the work health jurisdiction are dealt with as efficiently and effectively as possible. Proposed new rules will incorporate these procedures.

Procedures

Unless the Court otherwise orders –

- an interlocutory application will be supported by affidavit
- all evidence shall be by way of affidavit

Where a report of an expert medical witness is proposed to be placed before the court it shall not be necessary for that expert to swear an affidavit annexing any such report if:

- (a) the report is annexed to an affidavit from a party or a representative of a party;
- (b) a copy of all correspondence and documents placed before the medical expert to request or enable the report to be prepared is also annexed to such affidavit; and
- (c) the qualifications of the medical expert appear sufficiently from the face of the report or are otherwise established in the affidavit to the satisfaction of the Court.

Every interlocutory application shall be served by the applicant on all parties to whom it is addressed.

An interlocutory application and supporting affidavit shall be served within a reasonable before the day for hearing named in the interlocutory application, and in no case later than 2pm on the day before the day for hearing or, where the office of the Court was closed on the day before the day for hearing, not later than 2pm on the day the office was last open.

A reasonable time for service of an interlocutory application for interim payments will depend on the amount of time and difficulty in getting instructions on the material in the supporting affidavits to answer the appli-

cation. As a general guide, it is considered that one week's notice of the application and supporting material is reasonable.

The Court may, if it thinks fit, allow attendance by telephone or video-conference.

Consent Agreements

The following practice direction is issued pursuant to section 95 of the *Work Health Act* and applies from 1 September 1996.

Background

When orders have been agreed between the parties, the frequently request not to attend Court on a hearing date.

Parties to a work health claim can only "settle" a claim or "consent" to final orders in accordance with section 108 of the *Work Health Act*.

Procedures

- On the filing of a written application for an interlocutory order or direction (including interim determinations) under section 107(2) of the *Work Health Act*, together with the written consent of all other parties it is in the discretion of the Registrar of the Work Health Court whether –

- (i) to make the order on the information provided, eg supporting affidavits, in the absences of the parties; or
- (ii) to refer the application to a magistrate in the interlocutory list.

If the application had been set down for hearing and the documents are filed by **close of business the previous working day**, the Registrar may issue the consent order and vacate the hearing date. If the consent documents are not filed by close of business the previous working day, the parties must appear before a magistrate or Registrar on the hearing date of the application.

- If a matter has been set down for hearing and the parties "settle" the matter, the parties can file –

- (a) a memorandum of agreement in accordance with section 108 of the *Work Health Act*; or

- (b) a request/application in writing to vacate the hearing date and adjourn the matter sine die (for example, while the memorandum of agreement is prepared) together with the written consent of the other parties,

by close of business the previous working day and the Registrar of the Work Health Court may vacate the hearing date and adjourn the matter sine die. The procedures set out in section 108 of the Act are then followed. If the consent documents are not filed by close of business the previous working day, the parties must appear before the Court (magis-

trate or Registrar of the Work Health Court) on the hearing date.

It is up to the parties to check with the Registrar as to whether the consent order has been made and the hearing date vacated. If the hearing date has not been vacated, the parties must attend Court.

Consent agreements

The following practice direction is issued pursuant to section 21 of the *Local Court Act* and applies from 1 September 1996.

Background

Parties on agreeing the terms of an order (interlocutory or final) frequently request not to attend Court on a date set for the hearing of the application or claim.

Procedures

- If an application for interlocutory orders or directions has been set down for hearing and the parties subsequently file a notice of consent or an endorsed application in accordance with the Rules (Local Court Rule 28.05 and Small Claims Rule 12.03) **by close of business the previous working day**, the Registrar has the discretion to issue the consent order and vacate the hearing date. If the consent documents are not filed by close of business the previous working day, the parties must appear before a magistrate or Registrar on the hearing date of the application.
- The Registrar may make final orders at a prehearing conference, with the written consent of the parties (section 16 (3) of the *Local Court Act* and section 9 (2) of the *Small Claims Act*.
- If a matter has been set down for hearing and the parties advise that the matter has settled, the parties can file –
 - (i) a notice of consent in accordance with the Rules; or
 - (ii) a request/application in writing, together with the written consent of the other parties, to vacate the hearing date and adjourn the matter sine die (while a Notice of Discontinuance) or the terms of agreement are prepared).

by close of business the previous working day, and the Registrar may issue the consent order and vacate the hearing date. If the consent documents are not filed by close of business the previous working day, the parties must appear before a magistrate or Registrar on the hearing date of the application.

It is up to the parties to check with the Registrar as to whether the consent order has been made and the hearing date vacated. If the hearing date has not been vacated, the parties must attend Court.

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Consent Agreements Under the Crimes (Victims' Assistance) Act

The following practice direction is issued pursuant to section 21 of the *Local Court Act* and applies from 1 September 1996.

Background

Parties on agreeing the terms of an order (interlocutory or final) frequently request not to attend Court on a date set for the hearing of the application or claim.

Parties to a Crimes (Victims' Assistance) application can only "settle" the matter or "consent" to final orders in accordance with section 10A of the *Crimes (Victims' Assistance) Act*.

Procedures

- On the filing of a written application for an order or direction under Rule 9(6) of the Local Court (Crimes (Victims' Assistance)) Rules, together with the written consent of all other parties, it is in the discretion of the Registrar whether –
 - (i) to make the order on the information provided, eg supporting affidavits, in the absence of the parties; or
 - (ii) to refer the application to a magistrate in the interlocutory list.If the application had been set down for hearing at a mention date and the consent is filed **by close of business the previous working day**, the Registrar may issue the consent order and vacate the mention date. If the consent documents are not filed by close of business the previous working day, the parties must appear before a magistrate or Registrar on the mention date.
- The Registrar may make consent orders at a mention in accordance with Rule 9(6) of the Local Court (Crimes (Victims' Assistance)) Rules.
- On the filing of a section 10A consent agreement, the Registrar may issue an assistance certificate, if satisfied that agreement has been reached, or may refer the consent agreement to a magistrate.

If the application had been set down for hearing and the section 10A consent agreement is filed **by close of business the previous working day**, the Registrar may issue an assistance certificate and vacate the hearing date. If the matter settles but the consent agreement is not filed by the previous working day, the parties must appear before the Court (magistrate or Registrar) on the hearing date and file the consent agreement in Court.

It is up to the parties to check with the Registrar as to whether the consent order has been made and the hearing date vacated. If the hearing date has been vacated, the parties are not required to attend Court on the hearing date. However, if the hearing date has not been vacated, the parties must attend Court.

Applications under the De Facto Relationships Act

The following practice direction is issued pursuant to section 21 of the *Local Court Act* and applies from 1 September 1996.

Background

Section 4 of the *De Facto Relationships Act* provides that –

"Jurisdiction to make orders and declarations and grant other relief under this Part is vested in –

- (a) the Supreme Court
- (b) subject to section 5, the Local Court

Section 5 provides that the Local Court does not have jurisdiction to declare any title or right in respect of, or adjust any interest in, property of a value or amount which exceeds the jurisdictional limit within the meaning of the *Local Court Act*, unless the parties have consented in writing.

The Local Court Rule 4.02(1) provides that "a proceeding shall be commenced by filing a statement of claim in the office of the Court at the proper venue..."

Procedures

Proceedings in the Local Court for orders, declarations and other relief under Part 2 of the *De Facto Relationships Act* are to be commenced by filing a statement of claim.

The statement of claim is to be served on the defendant and a defence filed in accordance with the Local Court Rules.

On the filing of a notice of defence, the Court shall fix a date for a prehearing conference and notify the parties in accordance with Rule 25.01. The procedures and powers set out in Local Court Order 25 similarly apply.

Applications for Stay of Evidence

The following practice direction is issued pursuant to section 21 of the *Local Court Act*. It rescinds the practice direction dated 11 July 1996 and applies from 1 September 1996.

Background

Rule 66.16 of the Supreme Court Rules provides that the Court may stay the execution of a judgment.

Section 20 of the Local Court Act provides, inter alia, that an application for an order that a final order against a party who did not appear in the proceeding be set aside and that the proceeding be re-heard, does not operate as a stay of the final order unless –

- the Court so orders (section 20(3)) or
- the final order was for the payment of money in which case the application for re-hearing operates as a stay of so much of the order as relates to the payment of money (section 20(4)).

Order 22 of the Small Claims Rules does not cover stay of execution when a party files an application for re-hearing of a final order or of an order for default judgment.

Procedures

In the Local Court and Small Claims jurisdictions, where an application for an order to stay execution of a judgment is made, it shall be –

- in accordance with Form 20A in the Local Court or Form 12A in the Small Claims jurisdiction
- accompanied by a supporting affidavit setting out the reasons for staying execution
- served on the judgment creditor
- listed before the Court (constituted by a magistrate, a Judicial Registrar, a registrar or the Deputy Registrar (Civil)) as soon as possible but allowing enough time to enable personal service in the judgment creditor.

In the Small Claims jurisdiction, any related application for a rehearing (Form 22A) will be listed before a magistrate on the next "interlocutory applications" day.

An application for a re-hearing in the Local Court jurisdiction (Form 32A), which operates as a stay of an order relating to the payment of money, will be listed before a magistrate on an "interlocutory applications" day, to allow at least 14 days notice of the application to be given to the other party (LC Rule 32.01(2)).

I L Grey
Chief Magistrate
22 August 1996