

Practice directions

The Chief Magistrate has recently issued the following Practice Directions for the Magistrates Court with reference to the *Work Health Act* and *Local Court Act*.

Work Health Act Practice Direction

Answer

The following Practice Direction is issued pursuant to section 95 of the *Work Health Act* and will apply from 1 November 1995.

Background

Rule 8(1) of the Work Health Court Rules provides that an employer, served with an application under section 104 of the *Work Health Act* for the recovery of compensation, shall file a Notice of Address for Service and attach to it a legible copy of the written advice notice of reasons for the employers decision to dispute liability required under section 85(9) of the Act to be supplied.

Rule 14 of the Work Health Court Rules provides that a respondent, served with an application to the Court under section 62, 74, 11, 132 or 167 of the Act, shall file an answer.

The procedures prescribed by this practice direction are designed to ensure that all matters in the work health jurisdiction are dealt with as efficiently and effectively as possible.

Proposed new rules will incorporate these new procedures.

Until those rules are in force, the full cooperation of practitioners with the new procedures is requested.

Procedures

- An employer, served with an application under section 104 of the *Work Health Act* (Form 1) shall file an Answer in accordance with Form 4 of the Work Health Rules, within 7 days after the date

of service of the application and attach to it a legible copy of the written advice of reasons for the employer's decision to dispute liability required under section 85(9) of the Act.

- A copy of the Answer shall be served on the applicant as soon as practicable and in any case not later than 7 days after the date of filing.

Evidence by Video Conference

The following practice direction is issued to section 95 of the *Work Health Act* and will apply from 1 December 1995.

Background

Rule 22 of the Work Health Court Rules provides that evidence shall be given orally except where, inter alia, the Court orders that evidence of a particular fact shall be given in such a manner as it directs and Rules 22(8)(d) provides that the Court may order that evidence of a particular fact be given by the use of telephone or video conference facilities.

Video conferencing arrangements are to be made and confirmed to the Court as far in advance of the hearing as is reasonably possible.

It is not acceptable to wait until the commencement of the hearing to notify the presiding magistrate that some evidence will be given by the use of video conference facilities.

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 new procedures. Until those rules are in force, the full cooperation of practitioners with the new procedures is requested.

Procedures

When it is proposed to adduce evidence by use of video conference facilities:

- The party seeking to adduce evidence in that way shall, whenever possible, apply at a conciliation/directions conference for an order under Rule 22(8)(d) that evidence of a particular witness be given by use of video conference facilities and advise of any arrangements that have been made.

- If the party is unable to apply at a conciliation/directions conference, then the party shall apply by way of letter to the Registrar, serving a copy on the other party on the same day.

- Unless another party objects in writing, within 7 days of the date of the application, to the use of the video conference facilities, the Registrar may make the order.

- If another party objects to the use of the video conference facilities, the application shall be listed before the Registrar or a magistrate.

- An application may be heard either a) by the Registrar or by a magistrate and b) in a conciliation/directions conference or in open Court.

- The Court may give directions in respect of the following matters:

- a) which witnesses can give evidence by video conference.

- b) whether the evidence in chief of the witness at any subsequent video conference shall be confirmed to the witness statement.

- c) the date, time and place of the video conference, and

- d) any other matter as it thinks fit.

- The party adducing evidence by use of video conference facilities shall:

- a) arrange and pay for the booking of the necessary facilities at both ends and all other associated costs and expenses, and

- b) confirm in writing to the Court and to the other parties, as early as possible-

- (i) the name(s) of the witness(es); and
- (ii) the date, time and place of the video conference.

(continued page 1)

Local Court Act Practice Direction

Evidence by Video Conference

The following practice direction is issued pursuant to section 21 of the *Local Court Act* and will apply from 1 December 1995.

Background

The procedures prescribed by this practice direction are designed to ensure that matters in the local court jurisdiction are dealt with as efficiently and effectively as possible. Proposed new rules will incorporate these new procedures. Until those rules are in force, the full cooperation of practitioners with the new procedures is requested.

Video conference arrangements are to be made and confirmed to the Court as far in advance of the hearing as is reasonably possible.

It is not acceptable to wait until commencement of the hearing to notify the presiding magistrate that some evidence will be given by the use of video conference facilities.

Procedures

When it is proposed to adduce evidence by use of video conference facilities:

- The Party seeking to adduce evidence in that way shall, whenever possible, apply at a prehearing conference for an order that evidence of a particular witness be given by use of video conference facilities and advise of any arrangements that have been made.

- If the party is unable to apply at a prehearing conference, then the party shall apply by way of letter to the Registrar, serving a copy on the other party on the same day.

- Unless another party objects in writing, within 7 days of the date of the application, to the use of the video conference facilities, the Registrar may make the order.

- If another party objects to the use of the video conference facilities, the application shall be listed before the Registrar or a magistrate.

- An application may be heard either:
a) by the Registrar or by a magistrate,

b) in a prehearing conference or in an Open Court.

- The Court may give directions in respect of the following matters:

a) which witnesses can give evidence by video conference.

b) whether the evidence in chief of the witness at any subsequent video conference shall be confined to the witness statement:

c) the date, time and place of the video conference and

d) any other matter as it thinks fit.

- The party adducing evidence by use of video conference facilities shall:

a) arrange and pay for the booking of the necessary facilities at both ends and all other associated expenses; and

b) confirm in writing to the Court and to the other parties, as early as possible:

(i) the name(s) of the witness(es) and

(ii) the date, time and place of the video conference.

I.L. Gray

Chief Magistrate

31 October 1995

How to succeed..... in an Interlocutory Application before the Master.

Readers of *Balance* might be interested to note the following guidelines issued by the Master of the Supreme Court on the conduct of interlocutory applications.

Preparation.

1.1. The Summons

Consideration should be given to the orders sought and the legal basis for such orders. O.46.04(2) provides that the Summons shall state the order and rule or such other legislative enactment, by virtue of which the application is made.

1.2. Evidence in support.

Affidavit evidence may be required. If so, consider the proper evidentiary basis for the application and the manner of proof. Avoid surplusage. Consider whether the evidence is admissible. If it is proposed to rely on facts based on information and belief, make sure the grounds are set out (O.43.03 (2)).

1.3 Other

A list of authorities should be provided prior to hearing or copies provided at the hearing. In some applications a chronology may be useful. A written summary of submissions is always useful and may ensure that arguments are not overlooked.

The Hearing.

The Court should be informed as to the nature of the application and the evidence to be adduced. It is important that the affidavits to be relied upon are identified. This ensures that there is no doubt and gives the respondent an opportunity to object to the evidence. It is not always necessary that affidavits be read verbatim, this will depend upon circumstances. One consideration may be that persons other than the parties legal advisers may need to be apprised of the evidence.

Costs

O.63.18 provides that each party shall bear his own costs unless the Court otherwise orders. Parties seeking an order for costs should be prepared to make submissions as to why the court should depart from the general rule (see *TTE Pty Ltd v Ken Day Pty Ltd* (1992) 2 NTLR 143).

South Australia Agency Work

Available to undertake
agency and referral work
in most litigious and
non-litigious areas.

Contact:
Mark Hamilton
Telephone (08) 232 4767

Grope Hamilton
Lawyers
Level 1
ADC Building
83 Pirie Street
Adelaide SA 5000

Telephone
(08) 232 4767
Facsimile
(08) 232 5045



GROPE
HAMILTON
LAWYERS