

The following practice directions have been issued by the Chief Magistrate

The following practice direction is issued pursuant to section 95 of the *Work Health Act* and will apply from 1 January 1997.

Procedures

1. In all cases involving an appeal by a worker against an employer's decision under section 69 of the Act, the worker shall be dux litis on the evidence as a whole.

2. In cases where the worker asserts that the employer's decision was made without any basis then this issue may be determined (in an appropriate case) as a preliminary issue on affidavits only (with no cross-examination or oral evidence). In such cases the matter is to proceed on an interlocutory application and will be listed in the Interlocutory List on a monthly basis.

30 November 1996

Crimes (Victims' Assistance) Applications

The following practice direction, issued pursuant to section 21 of the Local Court Act rescinds the practice direction dated 12 October 1995.

Background

The procedures prescribed by this practice will be incorporated in the new legislation. The Crimes (Victims Assistance) Act is to be amended to provide that the applicant, the Territory and an offender who has filed a Notice of Address for Service will be parties to the proceedings. New rules will require supporting material to be served on all parties (ie the Solicitor for the Northern Territory and an offender who has filed a Notice of Address for Service), unless the Court orders otherwise. (Generally, all parties are entitled to access information before the Court. However, there may be circumstances where it is inappropriate for an offender to have access to certain information eg. in a medical report.)

Until the new rules are in force, the full cooperation of practitioners with the procedures set out in this practice direction is requested.

Procedures

APPLICATIONS FOR ASSISTANCE

An applicant must file the appropriate application for an assistance certificate. Supporting documents are not required to be attached to the application.

Service on the offender

A copy of the application must be served on the offender in accordance with the Local Court (Crimes Victims' Assistance) Rule 7. A copy served on the offender should have attached to it:

a) a copy of the form entitled "What to Do When You Get an Application".*

2) a copy of a Notice of Address for Service *

Service on the Solicitor for the Northern Territory

A copy of the application must be served on the Solicitor of the Northern Territory. At the same time as service of the application, the applicant should also serve:

1) an authority signed by the applicant and directed to each medical practitioner, institution or person providing relevant treatment to the applicant, authorising the Solicitor of the Northern Territory to inspect and copy such records as may be in the possession, custody or power of the medical practitioner, institution or person;

2) an authority signed by the applicant authorising the Commissioner of Police to release to the Solicitor for the NT a copy made of any statement made by the applicant to police relating to the alleged offence or the applicant's injuries.

NOTICE OF ADDRESS FOR SERVICE

An offender, served with an application, shall file and serve a Notice of Address of Service within 7 days of the date of service of the application. A copy of the Notice must be served on the applicant and on the Solicitor for the NT.

In accordance with the form* a Notice of Address for Service shall state:

- the offender's address for service
- the name and address of the offender's legal practitioner, if any

- if the offender intends to defend the application, the grounds for defending the application

- if the offender intends to raise issues of contributory conduct of the victim within the meaning of section 10 of the Act, details of that contributory conduct or any other matters considered relevant.

An offender who does not file a Notice of Address for Service may not be entitled to access to information (such as medical reports) to be relied on by the applicant.

APPLICATIONS OUT OF TIME

An application for an assistance certificate which is out of time must contain an endorsement to the effect that an application for extension of time should be filed at the same time as the endorsed application for assistance and must be supported by an affidavit setting out the reasons for delay.

The application for extension of time, the supporting affidavit and the endorsed application for assistance must be served personally on the Solicitor for the NT and, where his

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* sample forms available at the Law Society

TCA Not Necessarily Arbitrating Body

I would like to raise with you our concern that a number of contract documents have appeared with TCA written in as an arbitrating body.

I wish to advise that TCA will only become involved in those disputes that involve one of our members. I would therefore appreciate if you could advise the members of your Society of this position.

We would be more than happy to provide general assistance where we can, but we do not wish to see consumers given false expectations on the services offered by TCA.

Yours faithfully
David Malone
General Manager
Territory Construction Association

Grant a Wish for Christmas

Craig John is a young boy who is terminally ill with cancer. His "big dream" is to appear in the Guinness Book of Records. To achieve this he hopes to collect the largest number of business cards (one per company).

I therefore ask that you send one card to:

*Craig John
c/- Mr Jeff Crozer (Principal)
Cabra College
225 Cross St
CUMBERLAND SA 5041.*

I hope that you will appreciate that it is important and send it without delay.

*Yours faithfully
K.JNEVILLE
Fire Control Officer
Forbes Shire Council
FORBESNSW*

Practice Directions (cont)

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or her identity is known, on the offender. An application for extension of time will be dealt with either at the mention date or in Court.

SUPPORTING MATERIAL

An applicant must file, separate from the application, but as early as possible and not less than 7 days before the first mention date, the following:

1) an affidavit or statutory declaration in support of the application;

2) certificate(s) of conviction (if the offender has been convicted of an offence relating to the application) or advice from the Police as to the current state of any prosecution or investigation;

3) all medical and other relevant reports in the possession of the applicant relating to the applicant's claim and on which the applicant intends to rely at the hearing; and

4) documents supporting expenses claimed, loss of earnings, loss of clothing etc.

Unless the applicant has a reasonable excuse for not filing the supporting material at the time required, an order that each party bear their own costs of the attendance at the mention dates is likely to be made.

A copy of the supporting documents filed by the applicant must be served as soon as practicable on -

- the Solicitor for the NT
- any offender who has filed a Notice of Address for Service, unless an application is made for an order restricting access to the offender.

APPLICATIONS TO RESTRICT ACCESS BY THE OFFENDER TO CERTAIN DOCUMENTS

An applicant may apply for an order restricting access by an offender who has filed a Notice of Address for Service to certain material in the supporting documents. The application must be supported by an affidavit setting out the reasons for the application.

The application and the supporting affidavit must be served on the Solicitor for the NT and on any offender who has filed a Notice of Address for Service.

Unless the order is consented to by all parties, the application will be listed before a magistrate on an "interlocutory applications" date.

27 November 1996

Consent Orders

The following practice direction is issued pursuant to section 20AB of the *Domestic Violence Act* and will apply from 1 November 1996

Background

Section 5(1) of the *Domestic Violence Act* provides that the Clerk (being a Registrar

of the Local Court) may, with the consent of the defendant and the person making an application, or on whose behalf an application has been made, make an order under section 4 or 6 provided that the Clerk has explained or caused to be explained to the defendant the matters specified in section 5(5) of the Act.

Similarly, section 9(1) provides that the Clerk may, with the consent of the defendant and the person making the application, or on whose behalf the application was made, on application by a party to a proceeding, vary or revoke a restraining order provided that, in the case of a variation, the Clerk has explained or caused to be explained to the defendant the matters specified in section 9(4) of the Act.

If the Clerk is not satisfied that a consent order should be made, varied or revoked, the Clerk shall refer the application to the Court for decision (sections 5(2) & 9(2))

Procedures

1. Restraining orders by consent

If an application for a restraining order, ie an order under section 4 or 6 of the *Domestic Violence Act*, has been filed and set down for hearing and the parties, or their legal practitioners, advise the Registrar/Clerk that they want a consent order made under section 5 of the *Domestic Violence Act*, the Clerk may make a consent order, provided -

- the person making the application, or on whose behalf the application was made, consents in writing (on Form 3), either personally or by their legal practitioner, and

- the defendant consents in writing (on Form 3), either personally or by their legal practitioner, and

- the defendant attends in person before the Clerk who explains to the defendant in accordance with section 5(5) of the Act -

- (a) the purpose and effect of the proposed order;

- (b) the consequence that may follow if the defendant fails to comply with the proposed order; and

- (c) the means by which the proposed order may be varied or revoked.

2. If an application for a variation of a restraining order (Form 6) pursuant to section 8 of the *Domestic Violence Act* has been made by a party to the proceeding and the parties advise the Registrar/Clerk that they want a consent order made under section 9 of the *Domestic Violence Act*, the Clerk may make a consent order to vary a restraining order, provided:

- the person who made the application for the restraining order, or on whose behalf the application was made, consents in writing (on Form 3), either personally or by their legal practitioner, and

- the defendant consents in writing (on Form 3), either personally or by their legal practitioner, and

- the defendant attends in person before the Clerk who explains to the defendant in accordance with section 9(4) -

- (a) the purpose and effect of the variation; and

- (b) the consequence that may follow if the defendant fails to comply with the proposed variation.

3. Revocation of restraining orders by consent

If an application for a revocation of a restraining order (Form 6) pursuant to section 8 of the *Domestic Violence Act* has been made by a party to the proceeding and the parties advise that they want a consent order made under section 9 of the *Domestic Violence Act*, the Clerk may make a consent order to revoke the restraining order, provided -

- the person making the application for the restraining order, or on whose behalf the application was made, consents in writing (on Form 3), either personally or by their legal practitioner, and

- the defendant consents in writing (on Form 3), either personally or by their legal practitioner.

If the application has been set down for hearing, the Registrar/Clerk has the discretion to issue the consent order and vacate the hearing date, if the Form 3 is endorsed with the parties consent is filed by close of business the previous working day. If the consents are not filed by close of business the previous working day, the parties must appear before the magistrate or Registrar/Clerk on the hearing date of the application.

It is up to the parties to check with the Registrar/Clerk 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 the Court on the hearing date. However, if the hearing date has not been vacated, the parties must attend Court.

25 October 1996

The Chief Magistrate has also issued a practice direction pursuant to section 21 of the *Local Court Act* and to section 50 of the *Small Claims Act*, applying from 1 November on signature stamps. Copies are available from the Law Society.