

## *Transfer of Matters Between Local Court and Small Claims Jurisdictions*

The following practice direction is issued pursuant to section 21 of the *Local Court Act* and section 50 of the *Small Claims Act*. It rescinds the practice direction dated 16 February 1995 and will apply from 2 December 1998.

### **Background**

Section 23 of the *Small Claims Act* gives the Court power to order that a small claim for an amount greater than \$5000 be dealt with as if it had been commenced under the *Local Court Act*. Section 24 empowers the Court to order that a claim under the *Local Court Act* be dealt with as if commenced under the *Small Claims Act*. Both sections 23 and 24 require the Court to be satisfied, before making an order for transfer, that such an order would not be unfair to any of the parties to the proceedings.

### **Procedure**

The Court may have regard to the following matters when exercising its jurisdiction in relation to transfer between the Local Court and the Small Claims Court:

- the complexity of the issues involved in the claim, both factual and legal;
- the need for any interlocutory steps;
- the need for expert witnesses;
- the costs of the proceedings;
- the amount of the claim;
- the nature of the claim;
- any other matters considered relevant by the Court.



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## *Applications for Stay of Execution*

The following practice direction is issued pursuant to section 21 of the *Local Court Act* and section 50 of the *Small Claims Act*. It rescinds the practice direction dated 23 August 1996 and will apply from 2 December 1998.

### **Background**

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

Section 20 of the *Local Court Act* provides, inter alia, that an application to set aside a final order against a party who did not appear in the proceeding 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)).

Neither Order 36 of the Local Court Rules nor Order 23 of the Small Claims Rules cover stay of execution when a party files an application for re-hearing.

### **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 25A in the Local Court or Form 14A 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 as soon as possible but allowing enough time to enable service on the judgment creditor.

## *Rescission of Practice Directions*

The following practice direction is issued pursuant to section 21 of the *Local Court Act*, section 95 of the *Work Health Act* and section 50 of the *Small Claims Act*. It rescinds certain practice directions which have been rendered obsolete by reason of later practice direction having been issued or by the coming into force of new Local Court and Supreme Court Rules on 1 June 1998.

The following practice directions under section 21 of the *Local Court Act* are rescinded effective from 2 December 1998.

- Attendance by telephone 10.10.95 at interlocutory applications and prehearing conferences
- Evidence by video 14.11.95 conference
- Interest before date of 24.6.96 default judgment
- Transfer of Matters from 17.3.97 Local Court to Small Claims

The following practice directions under section 50 of the *Small Claims Act* are rescinded effective from the date of this practice direction:

- Attendance by telephone 12.10.95 at prehearing conferences
- Small Claims Rules 3.10.96
- Transfer of Matters from 17.3.97 Local Court to Small Claims

The following practice direction under section 95 of the *Work Health Act* are rescinded effective from the date of this practice direction:

- Evidence by Video 14.11.95 conference

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## Ceasing to Act

The following practice direction is issued pursuant to section 21 of the *Local Court Act*. It rescinds the practice direction dated 1 July 1996 and will apply from 2 December 1998.

### Background

Williams in "Civil Procedure - Victoria" states:

A solicitor shown by the court record to represent a party is responsible to that party, and responsible to the court for representing the party. The solicitor cannot assert at any stage of a proceeding that he or she does not act for a party who appears from the court record to be represented by him or her. A solicitor appearing from the court record to represent a party in a proceeding is normally bound to accept service of process and to attend, in person or by counsel, whenever the proceeding is called on for mention or hearing in the court." (pp. 3252-3)

Local Court Rule 40.03 (1) provides as follows:-

Where a legal practitioner ceases to act for a party in a proceeding, unless a notice of change is filed and served under Rule 40.01, the legal practitioner must without delay file a notice that he or she has ceased to act and serve a copy on all parties.

The Rule is limited by Rule 40.03(3) which provides:-

Except, with the leave of the Court, a legal practitioner must not file a notice under subrule (1) later than 56 days before the hearing of a proceeding.

### Procedures

A legal practitioner acting for a party may apply to the Court for leave to cease to act pursuant to Rule 40.03(s) by -

- way of letter to the Registrar stating -
  - a) that the legal practitioner is applying pursuant to Rule 40.03(3) for leave to cease to act for the party;
  - b) the reason for applying;
  - c) how and when the party was advised of the proposed application to cease to act; and
  - c) how and when the party was advised of the date and place of hearing.
- filing a signed Notice of Ceasing to Act stating that the practitioner has ceased to act and the address of the party last known to the legal practitioner.

Where leave is granted to cease to act, a copy of the sealed Notice of Ceasing to Act shall be served on all parties without delay.

## Consent Agreements

The following practice direction is issued pursuant to section 21 of the *Local Court Act* and section 50 of the *Small Claims Act*. It rescinds the practice direction dated 22 August 1996 and will apply from 2 December 1998.

### Background

Parties who have come to an agreement on the terms of an order (interlocutory or final) often request not to attend Court on a date set for the hearing of the application or claim.

There have been occasions on which parties have sought to adjourn or vacate a pre-hearing or conciliation conference without following formal procedures.

### Procedures

The Registrar will normally not exercise the discretion to issue a consent order and vacate an application or hearing date (Local Court Rule 36.06 and Small Claims Rule 21.06) unless the appropriate document is filed by 4pm the previous working day;

- In most circumstances, a notice of consent or an endorsed application in accordance with the Rules is required;
- In the order sought is only an adjournment of pre-hearing conference or conciliation conference, a letter signed by both parties will be sufficient;
- Neither telephone contact nor a letter signed by only one party is sufficient;
- If the consent documents are not filed by 4pm the previous working day, the parties must appear before the Court at the appointed time.

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 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*. It rescinds the practice direction dated 22 August 1996 and will apply from 2 December 1998.

### 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; and
- 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 5.06 provides that "a proceeding is commenced by filing a statement of claim".

### Procedures

Proceedings in the Local Court for orders, declaration 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 conciliation conference and notify the parties in accordance with Rule 32.01. The procedures and powers set out in Local Court Order 32 similarly apply.



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